

**Wholesale DSL Services Agreement**

This DSL SERVICES AGREEMENT consists of this cover sheet, the Master Terms and Conditions, any applicable schedules, and any amendments to the foregoing (collectively referred to as this “**Agreement**” or the “**Agreement**”). This Agreement is by and between IKANO Communications, Inc., (“**IKANO**”) and the Customer indicated below. This Agreement is to be effective on the date it is executed by IKANO (the “Effective Date”).

**Program**

IKANO develops, aggregates, and provisions several Internet Protocol (“**IP**”) based products and services, including broadband digital subscriber line (“**DSL**”) Internet access provided by third parties. IKANO is a provider of IP products and services and access to organizations and their end-user customers, members, and/or employees (“**Subscribers**”). The Customer desires to engage IKANO to provide certain IP based products and services and DSL Internet access on the terms set forth below. The Customer will offer the DSL program indicated. This Agreement includes the documents and schedules referenced below:

Wholesale DSL Platform

- Schedule 1 Master Terms and Conditions
- Schedule 2 Wholesale Services Description
- Schedule 3 Wholesale Pricing and Invoicing

By executing below, the Customer affirms that it has received and read the above identified schedules and agrees to be bound by their terms and conditions.

**Customer and Notice Information:**

The following specified the parties to this Agreement and the address and contact information for delivery of all written notices under the Agreement:

Provider: (“ <b>IKANO</b> ”):	IKANO Communications, Inc.	Customer Name: (“ <b>Customer</b> ”)	
Address	124 N Charles Lindbergh DR Salt Lake City, Utah 84116	Address:	
Telephone:	801-924-0900	Telephone:	
Facsimile:	801-924-0908	Facsimile:	
Contact (name):		Contact (name):	
E-mail:		E-mail:	

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below:

**IKANO COMMUNICATIONS, INC.**

\_\_\_\_\_

Sign \_\_\_\_\_

Sign \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**Schedule 1**  
**Master Terms and Conditions**

**1. Services.**

1.1. *Scope of Services.* In accordance with the terms and conditions of the Agreement, IKANO will provide the Internet access and services described in the Agreement, including any document incorporated therein. These services may be provided directly to Customer or to the Customer's end-user subscribers ("Subscribers"). Any additional services that IKANO agrees to provide shall be set forth in a duly executed addendum or amendment to this Agreement executed by the parties, or in a service order submitted by the Customer and accepted by IKANO (a service order shall be deemed accepted by IKANO either by written execution/acceptance or upon performance by IKANO of the services set forth therein) (the services described in the Agreement and additional services, if any, are hereinafter collectively referred to as the "Services"). The Customer acknowledges that IKANO has entered into agreements with third party service provider(s) to be able to provide aspects of the Services and agrees that IKANO may be unable to provide such Services, or portion thereof, in the event of any expiration or termination of such agreement(s) or failure of such third party. In such event, IKANO shall use commercially reasonable efforts to identify an alternative provider of such Service, or portion thereof. The Customer further acknowledges that in some circumstances IKANO is acting as an aggregator of services provided by third party service provider(s) and that IKANO may be unable to provide certain Services in the event of any expiration or termination of agreement(s) with such third parties or breaches by such third parties. Any non-performance or delay of Services to be rendered by IKANO hereunder shall be excused to the extent that such non-performance or delay is attributable to actions or inactions of the Customer or any third party. IKANO shall use commercially reasonable efforts to identify an alternative provider of such Service, or portion thereof.

1.2. *Force Majeure/Other Related Matters.* The Customer acknowledges and agrees that IKANO shall not be in breach of this Agreement if IKANO is unable to provide (for any period of time) all or part of the Services so long as such inability is the consequence of matters that are properly classified as "force majeure" or otherwise beyond IKANO's reasonable control. The term "force majeure" shall have the meaning normally afforded that term in the legal context and shall include, but not be limited to, "acts of God", natural disasters, terrorism, computer viruses, war, strikes and labor disputes, third-party breaches (including failure of third party vendors and providers to provide contracted for services and products), defaults, or failures not within the reasonable control of IKANO (including, but not limited to power outages, telecommunications system failures or defects).

**2. Payment for Services.**

2.1. *Fees and Pricing.* In consideration of the Services to be provided by IKANO, the Customer agrees to pay the fees specified in the Pricing and Invoicing Schedule incorporated into the Agreement. These fees are exclusive of federal, state, local, and foreign sales, use, or other tax, which the Customer agrees to pay, if applicable. In connection with offering the Services to the Subscribers, the Customer is solely responsible for payment of credit card and payment processing fees, and all billing adjustments/credits. In certain situations, IKANO may require the Customer to deposit funds with IKANO to secure payment of fees. Such deposited funds shall not bear interest.

2.2. *Payment of Invoices.* All set-up fees are due and payable on execution of this Agreement. All other fees will be invoiced by IKANO and payable by the Customer in accordance with the Pricing and Invoicing Schedule and IKANO's billing and invoicing procedures. The Customer's payment obligations are not contingent upon the ability to collect payments or charges from Subscribers. IKANO Invoices may be provided via e-mail or U.S. mails. Invoices are due and payable in accordance with the Pricing and Invoicing Schedule. Any fee not paid when due will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. The Customer agrees to pay all collection costs incurred by IKANO in enforcing its rights under this Agreement to collect amounts payable by the Customer (including, without limitation, reasonable attorneys' fees).

2.3. *Separate Invoicing by Provider.* IKANO is aggregating the services and networks of many different providers. In most cases, IKANO will be invoiced directly by the service provider. However, in some circumstances, a Customer will receive an invoice directly from a service provider, and IKANO will invoice for the IP applications provided by IKANO. This will be set forth in the applicable Pricing and Invoicing Schedule.

2.4. *Taxes and Other Additional Charges.* In addition to the charges set forth on the Pricing and Invoicing Schedule, the Customer shall be responsible for foreign, federal, state and local taxes assessed in connection with the Services, including without limitation, all use, sales, value-added, surcharges, excise, franchise, commercial, gross receipts, license, privilege or other similar charges. The fees are subject to change on the terms set forth in the Pricing and Invoicing Schedule. The fees may also include additional surcharges imposed by providers or by IKANO, as set forth in the Pricing and Invoicing Schedule. If any local, state, national, international, public or quasi-public governmental entity or foreign government or its political subdivision imposes any taxes (excluding taxes based on IKANO's income or capital or any property taxes), fees, surcharges, or other charges or impositions on IKANO as a result of IKANO's sale of Services to Customer, or Customer's use of Services, Customer agrees to and shall pay any such impositions ("Additional Charges") and indemnify IKANO from any liability or expense associated with the Additional Charges.

2.5. *Nonpayment/Payment Default.* If IKANO has not received payment of any invoice by the applicable due date (a "Payment Default"), IKANO may, in addition to its rights available to it at law or in equity: (i) suspend any or all Services to Customer upon written notice; (ii) terminate this Agreement; and/or (iii) IKANO may redirect any Subscriber billing and processing so that Subscriber payments are deposited directly into IKANO's account. IKANO may also contact a Subscriber directly to transition the Subscriber directly to IKANO's services. Prior to any suspension of any Services to Customer or termination of this Agreement, IKANO shall give no less than twenty four (24) hours advanced written notice of such Payment Default to Customer's senior management via email or telephone and the reasonable opportunity to cure such Payment Default prior to such suspension or termination and shall immediately restore Service upon the remedied breach. The Customer agrees to cooperate with IKANO in transitioning any Subscribers directly to IKANO and will not take any action to prevent IKANO from taking such actions. The Customer shall remain responsible for all charges related to the Services in accordance with this Agreement. The remedies provided by this Section are not exclusive.

2.6. *Price Adjustment.* IKANO may, at its discretion, adjust monthly Subscriber fees under this Agreement, and as set forth in the Pricing and Invoicing Schedule. The rates for creative, programming, engineering, and other services are subject to adjustment from time to time at the discretion of IKANO. In the event the underlying provider of any DSL or other Internet access service increases the amount charged to IKANO, IKANO shall have the right to correspondingly increase the rate charged to Customer.

2.7. *Invoice Disputes.* The Customer must notify IKANO in writing by certified postal mail with return receipt of any disputed charges prior to the due date for such charges. Billing disputes shall be defined as disputes in good faith, with reference to specific provisions of this Agreement, and with supporting factual documentation. If Customer does not notify IKANO within that time period, Customer is deemed to have waived any right to dispute such amounts, either directly or as a set-off, recoupment or defense in any action or efforts to collect amounts due to IKANO.

3. **Minimum Commitments.** The Customer agrees to the minimum commitments set forth in this Agreement, including any schedule incorporated herein. The minimum commitments are an essential part of the consideration in entering into this Agreement. In the event the Customer does not meet its minimum commitment in any month, the Customer will be responsible for payment of any deficiency to IKANO. If no minimum commitments are set forth in this Agreement, or any schedule, then there are no minimum commitments.

4. **Customer Use Agreement/Acceptable Use Policy.** All use of IKANO's Services by a Subscriber is conditioned upon a Subscriber's adherence to IKANO's Customer Use Agreement/Acceptable Use Policy ("CUA"), IKANO's network use policies, and the policies of third party network providers that may

provide Internet access or part of the Services (collectively, the "Use Policies"). In order to use the Services, each Subscriber must accept (by signing or clicking through) the terms and conditions of the applicable Use Policies. The Customer will require each Subscriber to agree to the applicable Use Policies. Subscribers who do not accept the terms and conditions of such Use Policies will not be permitted to access the IKANO network or the Services. The CUA and network policies must have substantively similar terms as those set forth in IKANO's standard policies, currently located at <http://www.ikano.com/dsluseragreement.asp>, and the policies of third party network providers will be governed by their rules. IKANO reserves the right to amend its CUA, network policies, and other Use Policies, effective upon posting to IKANO's website or other notice to the Customer. The Customer understands that IKANO's network providers may change their own network use policies, and the Subscribers will be responsible from following such policies. The CUA contains provisions prohibiting improper Subscriber activities, such as network abuse (using a dial-up connection as a dedicated connection or to otherwise remain connected to the Internet for an excessive unattended period of time); spamming; illegal/improper postings to newsgroups; and/or transmitting or otherwise displaying illegal or improper information or material, including defamatory, libelous, or obscene items. The Customer agrees to cooperate with IKANO in enforcing any applicable Use Policy and to abide by IKANO's decision to suspend/terminate any Subscriber account for violation of the CUA. IKANO reserves the right to take any and all additional actions it may deem appropriate with respect to Subscribers who violate any applicable Use Policy, including, without limitation, taking action to recover the costs and expenses of identifying offenders and excluding them from the Services, and levying cancellation charges and other penalties.

5. **Term of Agreement.** The initial term of this Agreement shall be for a period of one (1) year from the Effective Date of the Agreement. Thereafter, this Agreement shall automatically renew on a year-to-year basis unless either party provides notice to the other party of its intent not to renew this Agreement at least sixty (60) days prior to the end of the initial or any renewal term. Notwithstanding any expiration or termination of this Agreement, unless Customer is in default with respect to any Service, any Service being provided at the time of termination of this Agreement shall continue upon the terms and conditions of the Agreement until the Services are terminated or other arrangements are made. The cancellation, termination, or expiration of this Agreement shall not relieve either party of those obligations that, by their nature, are intended to survive such cancellation, termination, or expiration.

6. **Representations, and Warranties, and Additional Obligations Respecting Services.**

6.1. *Service Warranties.* IKANO shall perform the Services and shall operate and maintain its network consistent with generally accepted and customary industry standards. IKANO shall use commercially reasonable efforts to monitor and enforce performance obligations of its third party vendors and network providers, although the performance of such vendors is beyond IKANO's control. The Customer understands that IKANO may, from time to time, need to interrupt the Services for maintenance and other reasons, and that the Customer shall not receive any compensation for such interruptions. The Customer must report any deficiencies in the Services to IKANO in writing within five (5) days of such deficiency in order to receive any warranty remedies. The Customer will not make any representations or warranties with respect to the Services that are inconsistent with this Agreement. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, IKANO MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.2. *The Internet.* The Customer acknowledges and agrees that IKANO (including any IKANO supplier or vendor) does not operate or control the Internet and that (i) viruses, worms, Trojan Horses, or other undesirable data or software; or (ii) unauthorized users (e.g. hackers), may attempt to obtain access to the Customer's or its Subscribers' data, website(s), computers, or networks and that data may be destroyed by such attacks and the Services may be interrupted or compromised. IKANO exercises no control over and has no responsibility whatsoever for the content accessible or actions taken on the Internet and IKANO expressly disclaims any responsibility for such content or actions. IKANO uses what it believes to be reasonable efforts to protect itself, its customers, and any Subscribers from such unauthorized use, but IKANO is not responsible for failures resulting from the unauthorized acts of third parties. In the event that

IKANO is providing content filtering as part of the Services, the Customer acknowledges that filtering is provided only on a “reasonable efforts” basis and that while filtering may block much objectionable content, some objectionable content may pass through to Subscribers.

6.3. *Customer Representations.* The Customer represents and warrants that (i) Customer has the power and authority to enter into and perform its obligations under this Agreement; (ii) any Customer Content (defined below) provided does not and shall not contain any content, materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of a third party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third party right; (iii) Customer owns or otherwise has the right to use all Customer Content; and (iv) Customer has obtained or will obtain any required authorization(s) for hypertext links to other third party web sites. The Customer is solely responsible for obtaining all licenses, approvals, and regulatory authority for its operation and the provision of the Services to its Subscribers, including obtaining consent of Subscribers to provide Subscriber information and data, including credit card information, to IKANO.

6.4. *Customer Communications With Subscribers.* In circumstances where IKANO is providing any tier 1 customer support services directly to Subscribers, the Customer agrees to manage its communication to Subscribers to minimize any adverse impact on the Services and IKANO’s operations. Any communication to Subscribers that could be reasonably anticipated to increase IKANO customer or technical support volumes must be provided to IKANO in advance. The Customer will cooperate with IKANO in order to assist IKANO in anticipating staffing and resource requirements for the customer support services. The Customer will pay IKANO for additional customer service costs that result from the Customer’s failure to provide adequate notice or to work with IKANO in developing the appropriate communication in accordance with the foregoing. In emergency circumstances, and when IKANO is providing tier 1 customer support services directly to Subscribers, the Customer hereby agrees that IKANO may communicate to Subscribers directly, including via e-mail, with regard to the Services, including details and instructions about the Services and how to access them. IKANO may respond to Subscriber-initiated inquiries about the Services.

## 7. **Indemnification.**

7.1. *Indemnification by Customer.* The Customer agrees to indemnify, defend, and hold harmless IKANO, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys’ fees, to the extent that such action is based upon a claim that: (i) if true, would constitute a breach of any of Customer’s representations, warranties, or agreements hereunder; (ii) arises out of the negligence or willful misconduct of Customer; or (iii) any of the Customer Content to be provided by Customer hereunder or other material on the web site infringes or violates any rights of third parties, including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets and/or licenses.

7.2. *Indemnification by IKANO.* IKANO agrees to indemnify, defend, and hold harmless Customer, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys’ fees, to the extent that such action arises out of the gross negligence or willful misconduct of IKANO.

7.3. *Notice.* In claiming any indemnification hereunder, the indemnified party shall promptly provide the indemnifying party with written notice of any claim which the indemnified party believes falls within the scope of the foregoing paragraphs. The indemnified party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified party shall not be final without the indemnified party’s written consent, which shall not be unreasonably withheld.

8. **Limitation of Liability.** THE CUSTOMER AGREES THAT IKANO SHALL HAVE NO LIABILITY TO SUBSCRIBERS UNDER THIS AGREEMENT. IKANO SHALL HAVE NO LIABILITY WITH RESPECT TO IKANO’S OBLIGATIONS UNDER THIS AGREEMENT OR

OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF IKANO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF IKANO TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO AN AMOUNT EQUAL TO ONE MONTH'S REVENUES ACTUALLY PAID TO IKANO BY CUSTOMER UNDER THIS AGREEMENT DURING THE MOST RECENT MONTH. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

9. **Intellectual Property Rights.**

9.1. *Proprietary Right of IKANO.* Subject to Customer's ownership interest in Customer Content, all materials developed or provided by IKANO under this Agreement, including without limitation, any computer software (in object and source code form), scripts, programming code, data, information or HTML script, and any trade secrets, know-how, methodologies, and processes related to the IKANO's products or services, shall remain the sole and exclusive property of IKANO or its providers, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto (collectively "IKANO Materials"). To the extent, if any, that ownership of the IKANO Materials does not automatically vest in IKANO by virtue of this Agreement or otherwise, the Customer hereby transfers and assigns to IKANO all rights, title and interest which the Customer may have in and to the IKANO Materials. No right or license to any intellectual property rights associated with the IKANO Materials shall be implied and the Customer shall not copy, modify, reverse engineer, reverse compile, or disassemble any software code included in the IKANO Materials. The Customer acknowledges and agrees that IKANO designs and hosts web sites for other parties, and that IKANO shall have the right to provide third parties services which are the same or similar to the Services, and to use or otherwise exploit any IKANO Materials in providing such services. IKANO hereby grants to Customer a limited, non-exclusive, non-transferable license to make use of IKANO Materials, which are incorporated into and are required for the Services and only during the term of and in accordance with the terms of this Agreement. IKANO hereby reserves for itself all rights in and to the IKANO Materials not expressly granted to Customer in the immediately foregoing sentence. In no event shall Customer use any trademarks or service marks of IKANO without IKANO's prior written consent.

9.2. *Proprietary Rights of the Customer.* To the extent expressly provided by any description of Services, and subject to the payment of applicable fees for IKANO to incorporate such items, the Services may be branded with such name, logos, marks, and/or other identifying content as provided and approved by the Customer ("Customer Content"). Private label branding may not be available for all or part of the Services purchased by the Customer (for example, IKANO may require that a Subscriber authenticate with a generic ISP identity). Customer Content shall include any materials provided by the Customer for incorporation into the Services, including but not limited to any marks, domain names, logos, proprietary or copyrightable material, software, images, photographs, illustrations, graphics, audio clips, video clips or text and other materials of the Customer that the Customer may provide to IKANO to facilitate IKANO's provision of the Services. As between Customer and IKANO, Customer Content shall remain the sole and exclusive property of Customer. The Customer assumes sole responsibility for (i) acquiring any authorization(s) necessary for hypertext links to third party web sites; (ii) the accuracy of materials provided to IKANO, including descriptive claims, warranties, guarantees, nature of business and address where business is conducted, and (iii) ensuring that Customer Content does not infringe or violate any right of any third party. The Customer shall provide Customer Content that does not contain any content or materials which are obscene, threatening, malicious, which infringe on or violate any applicable law or regulation or any proprietary, contract, moral, privacy or other third party right, or which otherwise expose IKANO to civil or criminal liability. Any such materials provided by Customer to IKANO that do not satisfy the foregoing requirements shall be deemed to be a material breach of this Agreement. The Customer will indemnify and hold IKANO harmless for any allegations of misuse of such material resulting from the Customer's failure to obtain such necessary permissions and licenses or any other violation of third party rights caused by use of the Customer Content. No title to or ownership of any of the Customer Content will be transferred to IKANO. Customer hereby grants to IKANO a non-exclusive,

worldwide, royalty free license to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display and otherwise use Customer Content as necessary to render the Services to Customer under this Agreement.

## 10. **Termination.**

10.1. *Termination for Breach or Insolvency.* Either party may terminate this Agreement (effective after the applicable notice period): (i) for Cause or (ii) upon written notice if the other party becomes or is declared insolvent or bankrupt or is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer for it. For purposes of the foregoing, "Cause" means the failure of a party to perform a material obligation under this Agreement which failure is not remedied, if curable: (a) in the event of a payment default by Customer, within the period set forth in the applicable section of this Agreement; or (b) in the event of any other general default, upon thirty (30) days written notice (unless a shorter notice period is expressly set forth in this Agreement, in which case the shorter notice period shall apply). The Customer shall remain liable for charges accrued but unpaid. On any termination resulting from the breach of a party, the non-breaching party shall be entitled to recover from the other party all costs and expenses incurred by the non-breaching party in connection with the breach, including reasonable attorneys' fees, whether such costs and expenses are incurred with or without an arbitration or other proceedings or before or after judgment. On termination, the non-breaching party may retain all Subscriber ownership and related information, including credit card information and billing information, and may continue to provide services to and bill such Subscribers in the ordinary course of business.

10.2. *Additional Termination Rights.* IKANO may also terminate or suspend Services to the Customer or to any individual Subscriber at any time without notice in order to: (i) prevent damages to or degradation of its Internet network integrity which may be caused by the Customer or its Subscriber(s); (ii) to comply with any law, regulation, court order, or other governmental request order which requires immediate action; or (iii) otherwise to protect IKANO from liability. IKANO will use commercially reasonable efforts to: (a) minimize the effect of such termination or suspension; and (b) notify the Customer of the reason(s) for such termination or suspension as soon as reasonably practicable after such termination or suspension.

10.3. *Changes to DSL Market.* IKANO shall have the right to terminate the Agreement on sixty (60) days written notice if IKANO determines that it is unable to continue to support the DSL channel or otherwise offer DSL services to Customer and its subscribers because of changes to the industry or market or because it becomes uneconomic for IKANO to continue to offer DSL. In such event, IKANO shall provide commercially reasonable assistance to the Customer to transition Subscribers to another provider, if available.

10.4. *Survival of Provisions.* All terms and provisions of this Agreement, which should by their nature survive the termination of this Agreement, shall so survive.

11. **Confidential Information.** "Confidential Information," for purposes of this Agreement, shall include all information or data related to one party's business that is designated as confidential or that, by the nature of the information or the circumstances surrounding its disclosure, should in good faith be treated as proprietary or confidential. Confidential Information shall remain the property of the disclosing party. Each party shall use commercially reasonable efforts to protect the confidentiality of all Confidential Information, using at least the same standard of care as it uses to protect its own Confidential Information. Neither party shall at any time, without the prior written consent of the other party, disclose or use (except as expressly permitted by, or required to achieve the purposes of, this Agreement) the Confidential Information of the other party. Each party shall allow the disclosure of such information within its own organization only on a need-to-know basis and only to individuals who have agreed to maintain the confidentiality of such Confidential Information. If the recipient reproduces any part of such information for permitted use within its own organization, the recipient shall indicate the disclosing party's proprietary interest on all such reproductions. The obligation to keep information confidential shall survive termination or expiration of this Agreement. Notwithstanding the foregoing, neither party shall be bound by the confidentiality obligations hereof with respect to information which (i) was in the public domain at the time of disclosure; (ii) becomes publicly available through no fault of the recipient; (iii) was in the recipient's

possession, free of any obligation of confidence, at the time of receipt of the information from the other party; or (iv) was independently developed by employees or agents of the recipient, without reverse engineering barred by this Agreement or applicable law, and without reference to any of the information disclosed in confidence. A party may disclose Confidential Information if required by a governmental agency, by operations of law, or if necessary in any proceeding to establish rights or obligations under this Agreement, provided that the disclosing party gives the non-disclosing party reasonable prior written notice sufficient to permit the non-disclosing party an opportunity to contest such disclosure. Notwithstanding the foregoing, IKANO may use the name of and identify the Customer as an IKANO client in advertising, publicity, or similar materials distributed by IKANO or provided to prospective clients.

12. **Notices.** All demands, notices, and other communications to be given hereunder, if any, shall be in writing and shall be sufficient for all purposes if personally delivered, sent by facsimile, sent by nationally-recognized courier service, or if sent by registered or certified United States mail, return receipt requested, postage prepaid, and addressed to the respective party at the address set forth in the cover sheet to the Agreement (or at such other address as may from time to time be designated by such party in writing as herein provided). If personally delivered, notice under this Agreement shall be deemed to have been given and received and shall be effective when personally delivered. Notice by facsimile and nationally recognized courier service shall be deemed to have been given when received. Notice by mail shall be deemed effective and complete two (2) days after deposit in the United States mail.

13. **Miscellaneous Provisions.**

13.1. *No Partnership or Third Party Beneficiaries.* The relationship between IKANO and the Customer is that of independent contractors, and nothing in this Agreement shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking between the parties hereto, and the parties expressly agree that no such partnership is intended. Neither party shall have the right to bind or obligate the other party. No person or entity other than the parties hereto shall have, is deemed to have or claim any third party, direct or indirect benefits, rights or claims to this Agreement or the matters described herein.

13.2. *Assignment; Binding Agreement.* Except as set forth herein, neither party shall assign this Agreement, or any of the rights and obligations hereunder, to any other person without the express written consent of the other party, *provided, however*, that either party may assign its rights and obligations to (i) a Customer, partnership or other business entity wholly controlled or owned by the party; (ii) an affiliated entity in which the assigning party holds or owns a controlling interest (defined as the power to vote not less than fifty percent of such person's voting securities or ownership interest); (iii) a purchaser of all or substantially all of the assets of the assigning party's business; or (iv) a Customer into which the party's Customer is merged or consolidated, provided that notice of any such assignment is promptly given to the nonassigning party. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their heirs, legal representatives, successors, and assigns.

13.3. *Entire Agreement.* This Agreement, together with the Statement of Work and any other schedule, addendum, or exhibit expressly incorporated herein, contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by either party. Any prior negotiations, correspondence, or understandings related to the subject matter of this Agreement shall be deemed to be merged in this Agreement and shall be of no further force or effect. Each party has relied upon such party's own examination of the full Agreement and the provisions thereof, and the representations and covenants expressly contained in this Agreement itself. The failure or refusal of either party to inspect the Agreement or other documents, or to obtain legal advice or other advice relevant to this transaction, constitutes a waiver of any objection, contention, or claim that might have been based upon such reading, inspection, or advice. No modification addendum or amendment of this Agreement shall be of any force or effect unless in writing executed by all of the parties.

13.4. *Interpretation.* Unless otherwise provided, all terms shall have the meaning given them in the ordinary English usage and as customarily used. Words in any gender shall include both other genders.

Whenever the context requires, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof.

13.5. *Invalidity.* The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid provisions were omitted.

13.6. *Headings.* The paragraph and other headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of this Agreement.

13.7. *Counterparts; Facsimile Signature.* This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument. The parties hereto agree that transmission to the other party of this Agreement with its facsimile signatures shall bind the party transmitting this Agreement by facsimile in the same manner as if such party's original signature had been delivered.

13.8. *No Waiver.* Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of such party to enforce all of the terms and conditions hereof. No waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

13.9. *Authorized Execution.* The individuals executing the Agreement each represents and warrants (i) that he or she is authorized to execute this Agreement for and on behalf of the party for whom he or she is signing, (ii) that such party shall be bound in all respects hereby, and (iii) that such execution presents no conflict with any other agreement of such party.

13.10. *Choice of Law/Venue.* The parties agree that the substantive laws of the State of Utah, without reference to its principles of conflicts of laws, will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement. THE PARTIES EACH CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF AND VENUE IN A COURT LOCATED IN SALT LAKE COUNTY, UTAH FOR ANY SUITS OR CAUSES OF ACTION CONNECTED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE SUBJECT MATTER OF THIS AGREEMENT OR TO THE SERVICES. Except as otherwise required by law, including Utah laws relating to consumer transactions, any cause of action or claim you may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.

**SCHEDULE 2  
STATEMENT OF WORK  
WHOLESALE DSL SERVICES**

IKANO will offer wholesale Digital Subscriber Line (“DSL”) Internet access to the Customer that it can offer to its Subscribers. The following sets forth the business terms and conditions governing the Services, including obligations of IKANO and the Customer in providing, supporting, managing, and maintaining the Services.

**The Services**

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**Overview/Description of DSL Internet Access**

The Customer may offer and sell DSL access and related IP services to its Subscribers in those areas where it is available and supported by IKANO. The Customer is reselling DSL Services that are being aggregated, provisioned, and supported by IKANO. The DSL Services will not be branded as IKANODSL to the end customer. The DSL Services are completely private-labeled with the Customer’s brand in almost all areas of the process. In the case that a private-labeled service is not available, a generic brand will be used. Furthermore, a Subscriber will be required to enter a generic realm name (ex. xxx-xxx-xxxx@value.net) for use in logging on and authenticating to the service.

The wholesale DSL services do not include e-mail, newsgroup server access, website hosting, or any other Internet access services.

A DSL Circuit provides dedicated access to the Internet. It is a digital data telecommunications service utilizing Digital Subscriber Line technology. It typically consists of one private virtual circuit between a Subscriber’s location and IKANO’s network operations center or other facility. Service is provided to a Subscriber in conjunction with a circuit provider, which may be the Subscriber’s local telephone company. The circuit provider retains the right to cancel service to an individual Subscriber before or after installation at its sole discretion at any time.

IKANO will be responsible for DSL loop qualification (loop quals) and order processing for the Customer’s Subscribers. IKANO will make a web-based online tool available to the Customer for requesting loop quals, evaluating DSL service options, placing orders, etc. IKANO will work with the underlying circuit provider to provision the services. Although pre-qualification provides a good measure of certainty regarding service availability, it is not a guarantee of service.

**IKANO’s Role as Aggregator**

The nature of DSL technology is such that no one party provides all of the infrastructure, services, and support related to DSL Internet access. Multiple parties, including ILECs, CLECs, IKANO, and the Customer must work together and cooperate in order to effectively provide DSL Internet access to the Customer’s Subscribers. IKANO has made and continues to make significant investments in infrastructure, technology, services, etc., to enable it to serve as an aggregator of DSL services within the United States. IKANO’s ability to aggregate and provision DSL services is dependent on IKANO’s ongoing relationships with the underlying providers of the DSL Circuits and Services.

**Varying Speeds/Service Levels**

A DSL Circuit provides upstream and downstream maximum throughput rates that may vary, based on a number of factors. The maximum throughput rate depends on such factors as the distance of the Subscriber’s location from a provider’s central office, Internet congestion, upload and download speed of the destination server, and the quality of the copper telephone line serving the premise. Provision of a DSL Circuit includes Internet access service provided by IKANO.

Speed rate also depends upon the Subscriber's plan and line capabilities (e.g., loop length, line condition, gauge of copper wire and Phone Company provisioning). The maximum speed for ADSL is stated under optimal conditions and may vary significantly. Speeds are subject to a 20% overhead (e.g., 768k stated speed = 768k times 80% throughput = 614k actual speed). All Services are provided on an AS IS basis and throughput speeds are not guaranteed.

It has not been customary in the industry for DSL service providers to provide service level agreements in connection with the DSL services they offer. The Customer acknowledges that IKANO does not own or operate a significant portion of the network equipment involved with DSL Internet access and thus cannot provide a higher level of service than is provided by the DSL Providers for which it aggregates services. Generally, no service level agreement is provided.

### **Geographic Availability**

IKANO is aggregating DSL Circuits and services of third party telecommunications providers, generally providers that are an incumbent local exchange carrier (an "ILEC"). In some circumstances, IKANO may provide access through a competitive local exchange carrier (a "CLEC") and/or other broadband providers. As such, the availability of DSL Services in a specific location are dependent on whether IKANO has an agreement with the applicable telecommunications provider in that area, the locations of the telecommunications provider's Central Office, and the phone services received by the Subscriber's household or other location (in most cases, it is a requisite that the Subscriber's telephone services are provided by the service providing the DSL Circuit). DSL Circuits are not available in the entire geographic areas where IKANO may provide such services.

IKANO residential DSL Services will be installed at residential addresses only.

### **Equipment**

The Customer can provide its own modem, or can purchase modems from IKANO for resale to Subscribers. If the Customer or a Subscriber supplies its own modem, such party assumes the risk of service incompatibility. Incompatible Subscriber modems or other Subscriber equipment shall not relieve the Customer from any of its obligations under this Agreement or for payment for Services.

For any modem leased by IKANO to Customer, a Subscriber must return to IKANO the complete modem kit in a useable condition at Subscriber's expense within thirty (30) days of termination of the Service. The Company must pay ninety-nine dollars and ninety cents (\$99.90) plus applicable taxes to purchase any modem not returned to IKANO in working condition within such thirty (30) day period. It is the Customer's responsibility to make this payment to IKANO, and it does not matter whether the Customer is able to collect this amount from a Subscriber.

### **Installation**

A Subscriber can choose self installation to install the DSL equipment. This option does not include any wiring. If any inside wiring is required, the Subscriber may be required to contact the circuit provider or another professional installer at the Subscriber's own cost. Faulty inside wiring is not grounds for cancellation of a Subscriber contract. Multi-line phones, phone systems, alarm systems, or special phone configuration may require professional installation or special multi-line phone filters. IKANO does not provide nor is it responsible to provide any special equipment

In some circumstances, a Subscriber may request professional installation for an additional fee.

### **Minimum Individual Circuit Term**

DSL Circuits on the AT&T and Verizon networks are generally provided on a month-to-month term with no minimum time period. In some circumstances, a provider may impose a minimum term (the "Minimum Circuit Term"), either as part of its terms or to obtain promotional pricing. The Qwest and Covad networks

currently impose a 1 year Minimum Circuit Term. IKANO may also require a Minimum Circuit Term for promotional pricing. The Pricing and Invoicing Schedule will specify whether a Minimum Circuit Term is required. In such circumstances, if a Subscriber terminates service prior to the expiration of the Minimum Circuit Term, the Customer will be required to pay IKANO any applicable installation charges or early termination fees for such terminated account. It is anticipated that these costs will be passed on to Subscribers through the Subscriber Agreement.

### **Underlying Subscriber Agreements**

Unless otherwise provided by a specific promotional offering, most DSL service providers will require Subscribers to enter into agreements with terms at least equal to the Minimum Circuit Term in order to receive DSL service. These agreements will typically require Subscribers to pay significant amounts upfront for installation, new equipment, cabling, and other such similar costs. In addition these agreements will typically require that Subscribers pay a significant penalty if they cancel service prior to the expiration of the term of the agreement. The Customer is responsible for paying this amount and must take steps it deems appropriate to pass the cost on to the Subscriber so that the Subscriber is ultimately liable.

### **Software**

IKANO may provide to Customer and its Subscribers, you, via download, CD, other media, or other delivery method, the use of certain software which is owned by IKANO or its third party licensors, providers and suppliers, and which may be provided free or for a fee, including client and/or network security software (the "Software"). IKANO reserves the right to update or change the Software from time to time and the Customer agrees to cooperate in performing such steps as may be necessary to install any updates or upgrades to the Software. The Customer and its Subscribers may use the Software only as part of or for use with the Service and for no other purpose. The Software may be accompanied by an end user license agreement from IKANO or a third party. A Subscriber's use of the Software is governed by the terms of that license agreement and any other user agreement. A Subscriber must agree to the terms of the license or user agreement before installing and/or using the Software.

### **Marketing**

The Customer will use its best efforts to market and sell DSL services to its customers. All expenses incurred by the Customer in connection with its effort to obtain and retain Subscribers will be the sole responsibility of the Customer.

### **Termination of Agreement**

In the event the Customer is in default under the terms of the Agreement and IKANO determines to terminate the Agreement, IKANO will immediately contact the Customer's Subscribers directly to provide the option to (i) switch their Service directly to and have payments received directly by IKANO or (ii) have their Subscriber DSL Circuit immediately terminated. Neither of these options will relieve the Customer of any monies due IKANO.

## **Back Office Engine (BOE) Interface and Billing**

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### **Description of BOE**

The Back Office Engine (BOE) is IKANO's back-end resource for management of the Services. The BOE includes online tools and interfaces that may be used by the Customer to manage the Services. The BOE provisions components of the Services and allocates server resources when a Subscriber registers for the Services. The BOE may also be used by the Customer to create accounting and other reports respecting the Services. The BOE includes (i) DSL Administrative Management Tool; (ii) prequalification tool; and (iii) branded signup page. The Customer will use the BOE to enroll subscribers in the services. It is the Customer's responsibility to make sure all information in the BOE is correct.

IKANO will provide a web interface and online tools to the Customer to use the BOE. The Customer will be able to view available standard online information related to the Services.

### **Subscriber Reports**

The BOE enables the Customer to generate Standard Reports with respect to the Services. Examples of Standard Reports provided by the BOE include plan status reports (open/closed accounts, suspended accounts), failed credit card report and standard accounting reports.

### **Training**

During the term of this Agreement, the Customer must designate at least one individual as an expert with respect to the IKANO Services and the BOE. The designated expert(s) will have the responsibility for managing the Services and to have expertise about the operation of the BOE.

### **Customer Billing Responsibilities:**

The Customer is responsible for cancellations, refunds, collections and most billing questions. For account cancellations, technical support can instruct Subscribers where to send cancellation notices to the Customer. IKANO technical support can change a Subscriber's credit card information, however, if a Subscriber has further billing related questions they will be directed to speak with the designated contact person at the Customer.

Customer shall be responsible for providing customer service, billing, technical support and Subscriber billing. IKANO will not deal directly with Subscribers and Subscribers who contact IKANO shall be directed to Customer for assistance.

### **Customer Support Services**

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IKANO will provide Tier 2 customer support for the DSL Services and Subscriber support. The Customer can contact IKANO and IKANO will assist the Customer. IKANO will not interface with Subscribers directly. The Customer is responsible for all Tier 1 customer support issues and for providing customer support to Subscribers.

**SCHEDULE 3  
PRICING AND INVOICING SCHEDULE**

**Set-up Fee and Maintenance Fee**

\$200.00, due payable upon execution of the Agreement. \$200.00 maintenance fee, payable annually on each anniversary renewal of the Agreement.

**Recurring Monthly Subscriber Fees**

The monthly Subscriber fee for each Subscriber will vary depending on the underlying service provider, the geographic area, the transmission speed of the DSL Circuit, and other factors. IKANO will provide a schedule to the Customer setting forth the Customer's costs and coverage for the DSL services; with such schedule being located in the BOE, and updated by IKANO from time to time. The Customer can then resell such services to Subscribers at an additional cost, and retain the markup. The initial costs to the Customer are set forth below:

	<b>PPPoE</b>	<b>Static IP</b>
<b>ATT</b>		
Coverage by LATA: CA: 730, 732, 722, 726, 738, TX: 566		
768/384	\$14.95	\$24.95
1.5/384	\$15.95	\$25.95
1.5-3.0/512	\$20.95	\$30.95
3.0-6.0/768	\$34.95	\$44.95
<b>ATT - Traffic Aggregation Service (TAS)</b>		
Coverage: CA, NV, TX, OK, KA, AR, MO, IN, OH, MI, WI, IL		
1.5/384	\$19.95	N/A
<b>Verizon</b>		
Coverage by LATA: CA: 730, 973, 740, 722		
768/128	\$17.95	\$27.95
1.5/384	\$34.95	\$44.95
3.0/768	\$35.95	\$45.95
7.1/768	\$85.95	\$95.95
<b>Verizon -Traffic Aggregation Service (TAS)</b>		
Coverage: DC, FL, IL, IN, MD, MI, ME, MA, NC, NH, NJ, NY, OR, PA, RI, TX, VA, VT, WA, WI, WV		
768/128	\$22.95	N/A
1.5/128	\$25.95	N/A
1.5/384	\$30.95	N/A
3.0/768	\$30.95	N/A
7.1/768	\$89.95	N/A
<b>Qwest Residential – 1 year term required</b>		
Coverage: OR, WA, ID, MT, WY, ND, SD, MN, IO, NE, UT, CO, NM, AZ		
256K	\$27.50	N/A
1.5M	\$40.50	N/A
3-7M	\$61.50	N/A
<b>Qwest Business – 1 year term required</b>		
Coverage: OR, WA, ID, MT, WY, ND, SD, MN, IO, NE, UT, CO, NM, AZ		
256K	\$38.50	N/A
1.5M	\$51.00	N/A
3-7M	\$79.75	N/A

The Customer agrees to pay monthly Subscriber fees in advance. The first month's billing will be based on initial estimates provided by the Customer and agreed upon by IKANO. IKANO will bill in advance, generally during the first ten (10) calendar days of a month. The invoice is due by the end of that month, before the month of services. For example, IKANO will provide an invoice during the first part of June for July services and the invoice is payable before the beginning of July.

The Customer understands and acknowledges that the pricing for DSL Services is subject to change and is dependent on the prices charged by the telecommunications provider. The change in pricing will be effective when notice is given to the Customer, which will be by changing pricing posted to the Company's website interface through the BOE. Notwithstanding any other provision in the Agreement, notice of price changes will be effective upon posting of such changes by IKANO. It is the Customer's responsibility to periodically check the website and verify pricing.

**Minimum Commitment**

Waived.