

# WCS SERVICE GUIDE

Thank you for choosing service from Wholesale Carrier Services, Inc. or their affiliates ("WCS"). As a customer, your contract with WCS consists of your Network Services Agreement ("NSA") or Signature Acknowledgement Acceptance ("SAA"), which incorporates by reference the Terms and Conditions (hereinafter, the "Standard Terms") and the Service Level Agreement (hereinafter, the "SLA").

Your service agreement may include other terms and conditions set forth in additional schedules listed below. These service specific terms and conditions shall apply, in addition to your service agreement, the Standard Terms and SLA, in the event you purchase a service with applicable service specific terms and conditions.

PLEASE READ THE STANDARD TERMS AND ALL OTHER APPLICABLE SCHEDULES [INCLUDING WCS'S ACCEPTABLE USE POLICY ("AUP")] LISTED BELOW AS THESE GOVERN THE RELATIONSHIP BETWEEN YOU (THE CUSTOMER) AND WCS. BY ENROLLING IN, USING, OR PAYING FOR WCS'S SERVICES, THE CUSTOMER AGREES TO THE STANDARD TERMS, THE SLA, THE AUP AND THE OTHER APPLICABLE TERMS AND CONDITIONS SET FORTH BELOW. WCS MAY CHANGE THE STANDARD TERMS, SLA, AUP AND OTHER SCHEDULES LISTED BELOW AT ANY TIME. YOU SHOULD CHECK THIS SITE FREQUENTLY FOR THE MOST UP TO DATE INFORMATION. YOUR CONTINUED USE OF THE SERVICES CONSTITUTES YOUR AGREEMENT TO WCS'S TERMS AND CONDITIONS THAT ARE IN EFFECT AT THE TIME YOU USE THE SERVICES.

In order to view any actual material, you must have Adobe Acrobat Reader on your hard drive. You can download a free copy of Acrobat Reader by visiting the [Adobe Reader Download Site](#).

## **General Provisions**

- 1.0 Agreement of the Parties
- 2.0 Services
- 3.0 Effective Date, Term and Revenue Commitments
- 4.0 Ordering & Provisioning of Services
- 5.0 Payment Terms, and Charges; Credit
- 6.0 Suspension and Termination
- 7.0 Indemnity and Limitation of Liability
- 8.0 Warranty
- 9.0 Proprietary Information and Property Rights
- 10.0 General
- 11.0 Miscellaneous

### **1.0 Agreement of the Parties**

**1.1 Introduction.** This Service Guide governs the Services provided by Wholesale Carrier Services, Inc, a Florida corporation with its principal place of business at 12350 NW 39<sup>th</sup> Street, Coral Springs, FL 33065 ("WCS") to the Customer indicated on the applicable Signature and Acknowledgement Schedule ("SAA"). This Service Guide is a part of the Agreement between WCS and the Customer which also includes the Schedules, Exhibits, Attachments, Credit Application, LOAs, and all other documents required for WCS to provide the Services to Customer.

**1.2 Integration.** This Service Guide is a part of the Agreement between Customer and WCS which includes the Signature and Acknowledged Schedule ("SAA"), the Service Schedules, Rate Schedules, Service Orders, Order Forms and other similar documents (which may also be referred to individually as a "Schedule" or collectively, as the "Schedules") applicable to the Services (as hereinafter defined) and all applicable Schedules are fully incorporated into and become a part of the Agreement.

### **2.0 Services**

**2.1 Services.** Customer may order from WCS telecommunications or information services which may consist of either or both WCS' Services or Third-Party Services, (referred to herein collectively or individually, as the "Service(s)"). The WCS Services shall consist of those Services described in the attached service schedule ("Service Schedule(s)"). The WCS Services do not include any Services which constitute Third Party Services as defined herein. All Services ordered by Customer shall be provided upon the terms and conditions that are set forth in the Agreement as amended from time to time. WCS Services Schedules are as follows:

**2.1.1 networkWCS (on-net) Services**

These services comprise the product suite built on the networkWCS infrastructure described herein as "on net" and either originating or terminating on WCS facilities. These include comprehensive voice, data, internet and cloud services.

- a. SIP Trunking
- b. Outbound 1+ Dedicated
- c. Toll-Free Dedicated
- d. Outbound 1+ Switched
- e. Toll-Free Switched
- f. International DID
- g. ITFS
- h. UFIN
- i. Business PBX
- j. Hosted PBX
- k. IntelliPRI
- l. IntelliDoubleT
- m. IntelliFax
- n. IntelliLine
- o. Audio Conferencing
- p. Hosted Call Center
- q. Intelligent Call Router
- r. SD-WAN
- s. Elastic Cloud
- t. NNI

**2.1.2 Connectivity Services**

These services comprise the product suite of connecting two endpoints via a variety of protocols and layer 2/layer 3 services. Endpoints can be customer premises, carrier hotels and "meet-me" rooms, public internet and private IP access and data centers.

- a. Public IP – Broadband
- b. Public IP – DIA
- c. Private IP – MPLS
- d. Private Line
- e. Colocation

**2.1.3 Wireless**

These services comprise the product suite built on non-terrestrial wireless connectivity and equipment

- a. Fixed Wireless Data

**2.1.4 Resale Voice Services**

These services comprise the product suite built on resold analog and digital time division multiplexed (TDM) voice services

- a. Business Line POTS
- b. Resale Voice 1+
- c. Resale Toll-Free
- d. Resale Voice Conferencing
- e. Resale PRI

### **2.1.5 Managed Services**

These services comprise the product suite built technical or billing labor used in support of WCS-provided and third party provided services.

- a. Dispatch Services
- b. EnterpriseView WMM
- c. Convenience Rebill
- d. Toll-Free Resporg
- e. EnterpriseView TEM
- f. EnterpriseView Insite

**2.2 Third Party Services.** Upon Customer's specific written request, WCS may arrange on behalf of Customer for services to be provided by a third party ("Third Party Services") pursuant to Customer's Service Order. For instance, Third Party Services may include Local Access Services, third party provided interexchange services, and third party provided international service. The terms and conditions of service related to Third Party Services may be governed by applicable documents and understandings between Customer and the provider of the Third-Party Services.

### **3.0 Effective Date, Term and Revenue Commitments**

#### **3.1 Term of Agreement**

a. This Agreement is effective upon the Effective Date indicated on the SAA and shall continue in effect for the period indicated on the SAA. Thereafter, the Agreement shall continually renew as indicated on the SAA at WCS's then prevailing Rates unless either Party serves the other Party with written notice of such Party's intent not to renew the Agreement as prescribed on the SAA. The initial Term and all renewal periods shall be referred to as the "Term".

b. In the event that Services are provided pursuant to a Service Schedule, then this Agreement shall terminate upon the termination of the Service Order or Schedule having the last termination date.

c. A termination of this Agreement shall terminate the Service Schedules.

d. Each Service shall have a minimum term for that Service (a "Service Term"). The applicable Service Term for a Service shall be set forth in the applicable Service Order.

**3.2 Revenue Commitment and Service Billing Commitment.** Customer acknowledges and agrees that the Rates set forth in the Schedule(s) may be based upon Customer providing a revenue commitment to WCS. The SAA shall indicate the Customer Revenue Commitment and each Service Schedule shall provide the applicable Service Billing Commitment.

### **4.0 Ordering and Provisioning of Services**

#### **4.1 Service Orders.**

a. All Services shall be requested on WCS' Service Order forms in effect from time to time or on Customer's forms which have been previously accepted in writing by WCS ("Service Order(s)"). Service Orders shall be transmitted and processed in accordance with the terms and conditions of this Agreement as well as any procedures set out in the applicable Service Schedule for specific Services. WCS shall accept any Service Order under this Agreement that complies with the terms and conditions set forth herein subject to availability at the time Customer places such Service Order.

b. A Service Order is deemed accepted (subject to availability) by WCS when WCS transmits an electronic Order Confirmation Document ("OCD") to Customer indicating that Customer's Service Order is being processed by WCS; provided however, WCS will not issue an OCD for Switched Voice Services.

c. When a Service Order is placed, Customer will designate: (i) a requested start date ("Requested Start Date") for the Services; (ii) the desired term of the Services; and (iii) any other information necessary to enable WCS to provide the Services. WCS will make reasonable efforts to meet Customer's Requested Start Date but will not guarantee that date will be met.

d. Any changes to Service Orders initiated by Customer after Service Order acceptance by WCS may incur additional charges and may impact the Service start date.

**4.2 Turn Up Acknowledgement.** WCS will issue to Customer an electronic notice that WCS' Services are available ("Turn Up Acknowledgement" or "TUA"). The TUA will indicate that all the WCS' Services specified in a Service Order have been tested by WCS and that the WCS' Services meet or exceed the technical specifications set forth in the relevant Service Schedule(s) (the "WCS Technical Specifications"). The TUA will also set forth the date Services will be available for use by Customer.

**4.3 Installation and Site Access.** Service will be installed subject to the availability of installation personnel, network capacity, site readiness, site environmental safety, equipment, and connections to services furnished by other providers. WCS reserves the right to not install Service components in locations WCS considers to be unduly hazardous. Customer must provide appropriate equipment space, supporting structure, conduit and electrical power required to terminate service at a Customer site of Service delivery without charge to WCS. Customer is responsible for arranging access to Customer sites at any reasonable time so WCS may install, repair, maintain, inspect, or remove Service components.

**4.4 Service Acceptance.** Charges for Services begin accruing upon Acceptance by the Customer ("Effective Billing Date"). "Acceptance" as used herein shall mean the earlier of: (i) actual use of the Services; (ii) the date the Service is installed and is running in accordance with the requirements of this Agreement, or (iii) three (3) days after delivery of the circuits or facilities to Customer's premises.

## **5.0 Payment Terms and Charges; Credit**

### **5.1 Monthly Billing.**

a. WCS provides and charges for Services on a monthly basis in U.S. dollars in advance and usage in arrears.

b. Customer agrees that any and all taxes and/or surcharges applicable to the Services will be passed through to, and be borne by, Customer

c. Charges for installation charges and other non-recurring charges shall be billed in WCS' next invoice cycle and are due and payable in accordance with the Agreement.

d. Billing is presented in an electronic format via Internet and/or paper invoice to the Notice Address contained in the SAA.

### **5.2 Due Date, Invoice and Late Payment Charges.**

a. Customer acknowledges and understands that all charges for Services are computed exclusive of any Late Payment Charges as defined herein and any Additional Charges as defined herein. Any applicable Late Payment Charges and Additional Charges shall be accrued and paid by Customer in addition to all other charges for Services provided for herein.

b. Each Invoice shall be paid by Customer via ACH or electronic wire transfer or check in immediately available U.S. funds drawn on a US bank to an address that WCS may in writing direct Customer to remit payment pursuant to the notice provisions of this Agreement, so that the payment is received by WCS no later than thirty (30) calendar days (unless otherwise provided pursuant to this Agreement) from the date of the Invoice (the "Due Date"). The Parties agree that the Invoice will be sent via electronic mail to the Notice Address and that optionally, for a fee of \$7.99, a paper invoice can be sent by US Mail to the Notice Address or as indicated by the Customer on the Service Schedule/Order.

c. Any Invoice not properly disputed herein and not paid by the Due Date shall bear late payment fees at a maximum rate of 1.5 % per month until paid ("Late Payment Charges"). Customer will be deemed to agree to such Late Payment Charges and WCS is not obligated to make adjustments to charges on Invoices not properly disputed herein. Further, WCS may immediately suspend the Services, order processing and Customer's access to CDR's and FTP sites if any Invoice not properly disputed herein is not paid by its Due Date.

### **5.3 Billing Disputes.**

a. Notwithstanding the foregoing, amounts charged for WCS' Services which are reasonably disputed by Customer (along with late fees attributable to such amounts) shall not be due and payable for a period of thirty (30) calendar days following the Due Date, provided Customer: (i) pays all undisputed charges on or before the Due Date, and (ii) presents a written statement of any billing discrepancies to WCS in reasonable detail together with appropriate supporting documentation on or before the Due Date of the Invoice in question, and (iii) negotiates in good faith with WCS for the purpose of resolving such dispute within said thirty (30) calendar day period following the Due Date. WCS shall not be obligated to consider any Customer notice of billing discrepancies which are received by WCS more than thirty (30) days after the Due Date.

b. In the event such dispute is mutually agreed upon and resolved in favor of WCS, Customer agrees to pay WCS the disputed amounts together with any applicable late fees within five (5) business days of the resolution (the "Alternate Due Date"). In the event such dispute is mutually agreed upon and resolved in favor of Customer, Customer will receive a credit for the disputed charges in the next applicable invoice and no late fees shall apply.

c. In the event WCS has responded to Customer's dispute in writing and the parties fail to mutually resolve or settle the dispute during the thirty (30) calendar days (unless WCS has agreed in writing to extend such period), all disputed amounts together with the late fees shall become due and payable on the thirtieth (30th) day following the Due Date. This provision shall not be construed to prevent Customer from pursuing any legal remedies.

d. To the extent requested by Customer and to the extent Customer has reasonable grounds for such dispute, WCS will assist Customer to dispute any charges for Third Party Services provided that, such dispute shall be subject to the Third-Party Service provider's rules regarding disputed amounts and provided further, that, Customer shall indemnify WCS against any cost, expenses or charges incurred by WCS as a result of its assisting Customer to dispute charges for Third Party Services.

**5.4 Charges for Services.** All charges for Services shall be those stated in an applicable Service Orders unless the charges are otherwise specifically set forth in Service Schedules, in which case the charges set forth in the attached Service Schedules shall take precedence. Customer shall be liable for all charges including without limitation, monthly recurring charges, usage charges, installation charges, non-recurring charges, termination charges, cancellation charges, pass thru charges, loop charges, and other additional charges (the "Charges") for Services provided by WCS and by Third Party Services providers. Additionally, Customer shall pay for costs and expenses generated by Customer, as set forth in an applicable Service Order, and reasonably incurred by WCS, beyond those normally associated with the Services, including but not limited to, the following: (a) Customer's request to expedite Service availability to a date earlier than WCS' published installation interval or a previously accepted start date; (b) Service redesign or other activity occasioned by receipt of inaccurate information from Customer; (c) reinstallation charges following any suspension of the Service for Cause by WCS; and (d) Customer's request for use of routes or facilities other than those selected by WCS for provision of the Service. Where such costs and expenses are not specifically set forth in a relevant Services Order, WCS shall obtain Customer's prior written approval for said any costs and expenses incurred by WCS.

**5.5 Taxes, Regulatory Fees and Governmental Surcharges,** Information applicable to other Taxes, Regulatory Fees, and Governmental Surcharges appear at the WCS Fees Schedule set forth at the URL address indicated below. WCS may update the WCS Fees Schedule as needed and the Fees Schedule is incorporated into the Agreement.

<http://www.wcs.com/regulatoryfees>

**5.6 Credit and Further Assurances.**

a. WCS reserves the right to require that Customer establish, re-establish, and/or maintain creditworthiness to WCS' satisfaction. As such, and as a condition of Service(s) and/or application for Service(s), Customer authorizes WCS to examine, at any time, available credit and reference records for the purpose of assessing Customer's creditworthiness. If Customer's financial condition is unknown or unacceptable by WCS, WCS reserves the right to decline or suspend Service(s). WCS also reserves the right to evaluate, from time to time, Customer's creditworthiness and to require, at its sole discretion, a deposit or increase in a deposit.

b. If Customer believes that WCS has reported inaccurate information about an account to a credit reporting agency, Customer may send to WCS written notice describing the specific inaccuracy.

c. In the event WCS takes an adverse action with respect to Customer, based in whole or in part on information contained in a credit report, WCS will provide Customer with the following:

- (1) a notice of the adverse action in oral, written, or electronic form;
- (2) the name, address, and telephone number of the agency that furnished the report; and
- (3) a statement of a Customer's rights as contained in the Fair Credit Reporting Act, as applicable.

d. Customer shall provide WCS with a security deposit as indicated on the SAA in the form of a cash deposit, via wire transfer, payable within ten (10) business days of execution of this Agreement unless otherwise agreed to by the parties in writing. Failure to provide the security deposit shall be a material breach and WCS shall be entitled to suspend services or terminate this Agreement without any additional notice period to Customer.

e. Monthly Credit Limit. Customer's initial monthly credit limit hereunder shall be as indicated on the SAA (the "Monthly Credit Limit"). If Customer's charges for the Services are projected to exceed (based on WCS' measurement of Customer's daily usage run rate), or do exceed, its Monthly Credit Limit, WCS may require an additional security deposit from Customer for the amount of the projected shortfall or an amount equal to Customer's highest Invoice over the prior six (6) month period (or such lesser period if this Agreement has not been in effect for six (6) months), as a condition to continuing to provide the Services. Any such additional security deposit shall be provided by Customer to WCS within seventy-two (72) hours from Customer's receipt of WCS' written request for the additional security deposit.

f. Additional Security Deposit and WCS Right to Assurance. In the event of: (i) Customer's default of its obligations to WCS under this or any other agreement with WCS; (ii) Customer's failure to make full payment of undisputed charges due hereunder on or before the Due Date on two (2) or more occasions during any period of twelve (12) or fewer months; (iii) WCS does not have a security deposit from Customer in an amount equal to Customer's highest Invoice over the prior six (6) month period (or such lesser period if this Agreement has not been in effect for six (6) months), (iv) an acquisition of Customer (whether in whole or by majority of controlling interest) by an entity which is insolvent or which is subject to bankruptcy or insolvency proceedings, or which owes past due amounts to WCS or any WCS affiliate, or which is a materially greater credit risk than Customer; (v) a change in control of Customer; or (vi) Customer's being subject to or having filed for bankruptcy or insolvency proceedings or the legal insolvency of Customer; then in addition to any other remedies available to WCS, WCS may elect, in its sole discretion, to demand additional assurance of payment from Customer, including among others the posting of additional deposits not to exceed two months estimated billing and executing an agreement with WCS regarding the use of any such deposit ("Deposit Agreement"). Upon such demand, Customer shall deliver the additional deposit to WCS within seven (7) business days of request. Failure to provide the additional deposit shall be a material breach and WCS shall be entitled to suspend services or terminate this Agreement without any additional notice period to Customer.

g. Interest on Security Deposit. All Customer security deposit(s) held by WCS shall be deposited into a Commercial Money Market Deposit account at a FDIC bank and bear a variable rate of interest based on the collected balance compounded daily and credited monthly based on established tier groupings. WCS will pass through to Customer any and all interest earned on the Security Deposit for the duration of the Agreement including any Renewal Terms. Customer shall be entitled to receive interest accrued from the next business day after receipt of each security deposit payment by WCS.

h. Refund of Security Deposit. Notwithstanding any other provision of this Agreement, upon written notice of non-renewal, termination or cancellation of the Agreement for any reason, Customer's security deposit(s) and accrued interest will be credited against the final Invoice of WCS and the balance, if any, shall be returned promptly by WCS to the Customer, but in no event later than forty-five (45) days after Service is discontinued.

i. Record of deposits. WCS shall keep records to show (a) the date and amount of each Security Deposit from the Customer; and (b) each transaction concerning each Security Deposit.

## **6.0 Suspension and Termination**

### **6.1 Suspension of Service.**

a. Except for amounts disputed by Customer in accordance with the terms of this Agreement, in the event payment in full is not received from Customer on or before the Due Date, WCS shall have the right: (i) upon providing a minimum of ten (10) calendar days written notice (the "Suspension Notice"), to suspend or block, at any time after such Suspension Notice, all or any portion of all the Services then being provided to Customer; and (ii) to immediately place any pending Service Orders on hold, and to decline to accept any new Service Orders or other requests from Customer to provide Service commencing on the day that WCS issues the Suspension Notice to Customer. If WCS receives the entire past due amount within the ten (10) calendar day notice period, then Customer's Service shall not be suspended. WCS may continue such suspension until such time as Customer has paid in full all Charges then due, including any reinstallation charges and/or late fees as specified herein. Following such payment, WCS shall reinstate Customer's Services subject to WCS' Right to Assurance as provided herein.

b. Suspension of Services as set forth in this Article shall not affect Customer's obligation to pay for the Services. Notwithstanding anything to the contrary in this Agreement, if Customer has agreed to a Customer Revenue Commitment, any suspension of Service by WCS shall not relieve Customer of its obligations to pay the Customer Revenue Commitment Charge and Service Billing Commitment Charge.

### **6.2 Termination of Service**

a. In addition to its other termination rights hereunder, and with respect to all Services, either party may immediately disconnect any Services in whole or in part if such party determines that such Services violate any law, statute, or ordinance, including the Communications Act of 1934 (as amended); or (with respect to WCS only) that the imposition of any statute, or promulgation of any rule, regulation, or order of the Federal Communications Commission or other governing body makes WCS' performance under this Agreement commercially impracticable.

b. WCS may immediately suspend, restrict or terminate the provision of Service, in whole or in part, and may deny requests for additional Service or initiate other appropriate action, if it determines that there is unusually high volume of calls placed on Customer's account in any 24-hour period or if it suspects fraud, abuse or misuse by Customer, end-users, or third parties.

### **6.3 Termination of Agreement**

a. Termination of Agreement for Cause. Either party may terminate this Agreement if the other is in default of any material obligation contained herein, which default has not been cured within (30) calendar days following the written receipt of notice of such default setting forth the specifics of such default ("Cause"), unless another procedure is specified in this Agreement.

b. Termination without Cause. Customer may terminate this Agreement, in whole or in part, at any time without cause by providing written notification to WCS thereof thirty (30) days in advance of the effective date of the termination. In the event of such termination, Customer shall pay to WCS an "Early Termination Charge" as referenced herein.

c. Termination Due to Government Action. If WCS is prohibited by governmental authority from furnishing or Customer is prohibited from using such portion, of Services or if any material rate or term contained herein and relevant to the affected portion of any Service is substantially changed by order of the highest court of competent jurisdiction to adjudicate the matter, the Federal Communications Commission, or other local, state, federal, or foreign government authority, then notwithstanding the foregoing, and upon written notice consistent with the mandate put forth by the applicable governmental authority or commission, from one party to the other party, either Customer or WCS shall have the right, without incurring an Early Termination Charge or other liability to the other party, to disconnect the affected portion of any Services.

d. Termination Due to Vendor Action. If WCS is prohibited from furnishing Services to or if any material rate or term contained herein and relevant to the affected portion of any Service is substantially changed due to actions by WCS vendors, then notwithstanding the foregoing, WCS shall have the right to terminate Services or this Agreement, as applicable.

### **6.4 Effect of Termination.**

a. In the event of termination for any reason, Customer shall be obligated for Charges for Services up

through termination of the Agreement or Schedules.

b. In the event (1) WCS terminates this Agreement for Cause or (2) Customer terminates this Agreement for convenience (without Cause), then in addition to all other Charges owed, Customer shall pay to WCS the following: i. "Early Termination Charge" which shall be indicated on the applicable Service Orders ii. "Revenue Commitment Charge" which shall be as indicated on the SAA. iii. In calculating the Revenue Commitment Charge, the Early Termination Charge that is paid by Customer shall be applied to the Revenue Commitment Charge owed.

c. In the event Customer terminates this Agreement for Cause, then the Customer shall pay only for Charges for Services accrued for Services which have been furnished up to the time of termination.

d. Liquidated Damages. Customer agrees that the actual damages in the event of a disconnection would be difficult or impossible to ascertain, and that the Early Termination Charges and Customer Revenue Commitment Charges are intended to establish liquidated damages only due to WCS costs and are not intended as penalties.

**6.5 Non-exclusive Remedies.** The remedies available to the parties set forth in this Section shall not be exclusive and each party shall at all times be entitled to all rights available to it under either law or equity.

## **7.0 Indemnity and Limitation of Liability**

### **7.1 Indemnity.**

a. Customer and WCS shall defend, indemnify and hold harmless the other its affiliated companies and their respective officers, directors, employees, contractors and agents against and from any and all claims for damage to tangible property or bodily injury, including claims for wrongful death, to the extent that such claim arises out of the negligence or willful misconduct of the respective indemnifying party, its employees, agents, or contractors in connection with this Agreement or the provision of Services hereunder.

b. Customer will defend, indemnify and hold harmless WCS' Providers its affiliated companies and their respective officers, directors, employees, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation, all reasonable costs and expenses incurred including all reasonable litigation costs and attorneys' fees (collectively, "Damages") arising out of, resulting from or based upon any complaint, claim, action, proceeding or suit of any third party, including any governmental authority, (a "Claim"), based on Customer's violation of any law or any rule or regulation or Customer's breach of any warranty or representation made herein by Customer.

c. WCS will defend, indemnify and hold harmless Customer, its affiliated companies and their respective officers, directors, employees, contractors and agents against and from any Damages arising out of, resulting from or based upon any Claim based on the violation of any law or any rule or regulation by WCS Providers or the breach of any warranty or representation made herein by WCS.

d. "WCS' Providers" shall mean WCS Third Party Service providers and any third party or affiliated provider, operator, or maintenance/repair contractor of facilities employed in connection with the provision of Services.

e. The indemnified party shall promptly notify the indemnifying party in writing of any claims which are subject to the terms of this Article. The indemnified party shall have the right at its own expense to appoint its own counsel who shall be entitled to participate in any settlement negotiations or litigation regarding any matter for which it is entitled to be indemnified hereunder. The indemnifying party shall not agree to any settlement or consent to any decree, order or judgment without obtaining the consent of the indemnified party which consent shall not be unreasonably withheld.

### **7.2 Limitation of Liability.**

a. IN THE EVENT OF ANY BREACH OF THIS AGREEMENT OR ANY FAILURE OF THE SERVICES, WHATSOEVER, NEITHER WCS, CUSTOMER NOR ANY WCS' PROVIDER SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF WCS,



CUSTOMER OR THE WCS' PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

b. WCS also shall not be liable for any damages arising out of or relating to: interoperability, interaction, access, or interconnection problems with applications, equipment, services, content or networks not provided by WCS; interruptions in Service or lost or altered messages or transmissions; or unauthorized access to or theft, alteration, loss or destruction of Customer's or third parties' applications, content, data, programs, information, network or systems.

c. This Article shall survive the expiration or termination of this Agreement.

## **8.0 Warranty**

**8.1 Performance Warranty.** WCS warrants and represents that WCS' Services shall perform in all material respects in accordance with the WCS Technical Specifications.

**8.2 Disclaimer of Additional Warranty.** WCS MAKES no warranty with respect to the Service OR ITS PERFORMANCE UNDER THIS AGREEMENT UNLESS EXPRESSLY SET FORTH IN THIS AGREEMENT. WCS MAKES no warranty with respect to WCS SERVICES OR THIRD-PARTY SERVICES WITH THE EXCEPTION OF THE EXPRESS WARRANTIES, IF ANY, SET FORTH IN THE SCHEDULES. WCS DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **8.3 Compliance with Law.**

a. WCS agrees that the provision of the Services shall be in accordance, and comply, with all applicable laws, regulations, and rules and that WCS shall obtain and cause all Third-Party Service providers to obtain all approvals, consents and authorizations necessary to conduct their respective businesses.

b. Customer agrees that its use of the Services shall be in accordance, and comply, with all applicable laws, regulations, and rules and that Customer shall obtain all approvals, consents and authorizations necessary to conduct its business and initiate or conduct any transmissions over any facilities covered by this Agreement. WCS reserves the right, exercisable in its sole discretion, to disconnect or restrict any transmission initiated by Customer, if such actions are reasonably appropriate to assure that WCS is not in violation of any civil or criminal law, regulation or rule, or if Customer violates WCS' Acceptable Use Policy.

## **9.0 Proprietary Information and Property Rights**

### **9.1 Proprietary Information.**

a. WCS and Customer understand and agree that the terms and conditions of this Agreement and all documents referenced herein (including notices and invoices to Customer for Services provided hereunder) are confidential as between Customer and WCS. Neither Customer nor WCS shall disclose such information to any third party without the prior written consent of the other, except as provided for herein. When confidential information is furnished in a tangible form by one party to the other, the disclosing party shall mark the information in a manner to indicate that it is considered confidential. When information deemed to be confidential is provided orally, the disclosing party shall, at the time of disclosure, clearly identify the information as being confidential and confirm such designation in writing within ten (10) calendar days thereafter. If the disclosing party fails to identify information as confidential, such disclosing party may correct the omission by later notice consisting of a writing or statement, and the receiving party shall only be liable for unauthorized disclosures of such confidential information made subsequent to said notice. All information identified as confidential pursuant hereto shall not be disclosed by the receiving party to any third party without the written consent of the disclosing party, except as provided for herein.

b. The party to whom confidential information is disclosed shall have no obligation to preserve the confidential nature of such information if it: (i) was previously known to such party free of any obligation to keep it confidential; (ii) is or becomes publicly available by other than unauthorized disclosure; (iii) is developed by or on behalf of such party independent of any information furnished under this Agreement; or (iv) is received from a third party whose disclosure does not violate any confidentiality obligation. WCS may disclose confidential information regarding its relationship with Customer to commercial lenders who have specifically agreed to hold such information in confidence.

c. In addition, a party may disclose confidential information provided to it by the other party if such disclosure is made pursuant to the requirement or request of a recognized stock exchange or of a governmental agency or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation or court order, and provided further, that, prompt notice thereof is given (unless such notice is prohibited by law) to the disclosing party of any such requirement or request.

d. This Article shall survive the expiration, cancellation or termination of this Agreement.

**9.2 Intellectual Property Rights.** Unless otherwise specifically agreed in writing by the parties, each party shall retain all right, title and interest in and to any intellectual property associated with the provision of Services. If it should be necessary for a party to practice any patent, copyright, trade secret or other non-trademark intellectual property of the other party to avail itself of the Services, the parties shall negotiate in good faith a license with respect to such intellectual property. Each party acknowledges that the other party's name is proprietary to the other party. This Agreement does not transfer, and confers no right to use, the name, trademarks (including service marks), patents, copyrights, trade secrets, other intellectual property or CIC of either party, except as expressly provided herein. Neither party shall take any action inconsistent with the intellectual property rights of the other party.

**9.3 IP Addresses and Domain Names.** Except for IP addresses and domain names transferred and expressly registered in Customer's name, all IP addresses and WCS-based domain names shall remain, at all times, property of WCS and shall be nontransferable. Customer shall have no right to use such IP addresses or WCS-based domain names upon termination of the applicable Service components.

## **10.0 General**

**10.1 Customer Facilities.** Customer has sole responsibility for installation, testing and operation of facilities, services and equipment ("Customer Facilities") other than those specifically provided by WCS as part of the Services as described in a Service Order. In no event will the untimely installation or non-operation of Customer Facilities relieve Customer of its obligation to pay Charges for the Services after the Effective Billing Date.

**10.2 Title to Equipment.** This Agreement shall not, and shall not be deemed to, convey to Customer title of any kind to any of the transmission facilities, digital encoder/decoders, equipment, telephone lines, microwave facilities or other facilities utilized in connection with the Services unless specifically detailed in Customer Service Order.

**10.3. Notices.** All legal notices to be sent to a party pursuant to this Agreement shall as indicated on the SAA. Notice shall be by (1) email, (2) facsimile, (3) reputable overnight delivery courier, or (4) bill message and shall be effective upon receipt (or upon delivery if receipt is rejected).

**10.4 Force Majeure.** If either party's performance of this Agreement or any obligation (other than the obligation to make payments) hereunder is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, power outage, storm or other similar occurrence including rain fade or other atmospheric conditions, any law, order, regulation, direction, action or request of any government, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, acts of terrorism, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, then the party that is unable to perform or meet its obligations due to such causes shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference. The party that is unable to perform or meet its obligations due to such causes shall use commercially reasonable efforts under the circumstances to avoid and remove such causes of nonperformance and shall proceed to perform with reasonable dispatch whenever such causes cease. In the event the force majeure event prevents the use of the WCS' Services and such force majeure event continues for a period of sixty (60) days, then either party may disconnect the affected Services without incurring liability, except for Customer's liability for any Charges to WCS or to a Third-Party Service provider.

**10.5 Amendment.** WCS may change the Agreement at any time. In the event a change to the Agreement materially alters (i) this Agreement; (ii) Customer's Services; or (iii) the Charges for Customer's Services,

then WCS will provide Customer with sixty (60) days in which to terminate the effected Services without Early Termination Charge. Use of Services past that date shall constitute acceptance to the changes to the Agreement.

**10.6 WCS' Acceptable Use Policy (AUP)** The policy is set forth at the following URL:

<http://www.wcs.com/aup>

The AUP applies to any Service Component or capability that is provided over, or includes access to, the Internet. The AUP describes the actions WCS may take in response to AUP violations.

## **11.0 Miscellaneous**

**11.1 No Venture.** The provision of Services shall not create a partnership or joint venture between the parties. The parties hereto are independent contractors.

**11.2 Assignment.** Customer shall not assign or otherwise transfer (including, without limitation, a transfer due to a "Change of Control") its rights or obligations under this Agreement without the prior written consent of WCS, which shall not be unreasonably withheld. Customer must be current on all payments required by this Agreement before any assignment is approved by WCS. Any such assignment or transfer of Customer's rights or obligations without such consent shall entitle WCS to disconnect the Services provided hereunder at its option upon ten (10) calendar days' prior written notice to Customer and shall constitute a default of a material obligation by Customer. A Change in Control shall be deemed to be an assignment, merger, sale of a controlling interest or other transfer of a controlling ownership interest.

**11.3 Choice of Law.** This Agreement shall be governed by the laws of the State of Florida, U.S. without regard to choice of law principles. Customer hereby consents to the jurisdiction and venue of the Federal and State courts having a site in Broward County, Florida, U.S.

**11.4 Priority of Agreement and Schedules.** In the event of any inconsistency in the Agreement between or among a Service Order, a Service Schedule, this Service Guide and any applicable tariff, the following order of precedence shall prevail (from highest priority to lowest): the applicable Service Order, Service Schedule, the Service Guide, and the tariff (if any).

**11.5 No Third-Party Beneficiary.** The provisions of this Agreement are for the benefit only of the parties hereto, and no third party may seek to enforce or benefit from these provisions unless specifically referenced.

**11.6 Costs and Attorneys' Fees.** If a proceeding is brought for the enforcement of this Agreement, collection of money owed, or because of any alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled. This Section shall survive the expiration or termination of this Agreement.

**11.7 Severability.** If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then (a) both parties shall be relieved of all obligations arising under such provision and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent, and (b) the remainder of this Agreement shall be valid and enforceable.

**11.8 No Waiver.** The failure of either party to enforce any provision hereof shall not constitute the permanent waiver of such provision.

**11.9 Publicity and References.** Subject to the provisions herein that pertain to confidentiality and proprietary information, the parties contemplate and agree that publication of information relating to this Agreement may occur through press releases, articles, interviews, marketing materials, online materials, and/or speeches ("Publicity"). Both parties must approve the content of any such Publicity prior to its publication, which approval shall not be unreasonably withheld. Routine references to the fact that Customer is a customer of WCS and the general nature of services that Customer purchases under this

Agreement are not considered Publicity for purposes of this section, and Customer and WCS each authorize the other, during the Term of this Agreement, to make such references.

**11.10 Headings.** Descriptive headings contained in this Agreement are for convenience and not intended as substantive portions of the Agreement. Such headings shall have no effect upon the construction of the Agreement.

**11.11 Industry Terms and Definitions.** The parties intend that words having well-known technical or trade meanings shall be accorded such meaning, unless expressly defined otherwise. For purposes of this Agreement, capitalized words and phrases shall have the respective meanings assigned to them in this Agreement.

**11.12 Drafting Ambiguities.** The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

**11.13 Counterparts and Electronic Signature.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Facsimile signatures and electronic signatures (or digitized) shall be deemed original signature.

**11.14 Survival of Terms.** No termination of this Agreement or disconnection or suspension of Service shall affect the rights or obligations of either party: (a) with respect to any payment for Services rendered before termination; or (b) pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, including without limitation, the following: Indemnification, Limitation of Liability, Proprietary Information, Notices, Choice of Law, Intellectual Property Rights, No Solicitation of WCS Employees, and Costs and Attorneys' Fees.

**11.15 Prohibition of Resale.** Except as explicitly authorized in a written agreement, the Service(s) provided hereunder to Customer shall not be resold or provided to third parties.

**11.16 Binding Effect.** Except as otherwise provided for herein, this Agreement shall be binding upon and shall inure to the benefit and responsibility of the parties hereto and their respective legal representatives, heirs, successors, and assigns.

**11.17 Time of the Essence.** Time shall be of the essence for each and every provision hereof.

**11.18 Appointment of Representative.** Customer may appoint third parties to act as Customer's agent for purposes of ordering Service, receipt of bills from WCS, or other administrative tasks associated with the Agreement. Customer shall provide WCS written authorization of the representative to act on Customer's behalf. Customer will be responsible for all Charges for Services ordered by the representative and all acts and omissions of the representative.

**11.19 No Solicitation of WCS Employees.** For a period of twenty-four (24) months after the termination or expiration of this Agreement, neither Customer nor any of its affiliates will solicit to employ or contract with, and shall not employ or contract with, any of the current officers or employees of WCS without obtaining the prior written consent of WCS. Responses to advertisements or other indirect solicitations in the ordinary course of its business shall not be deemed a violation of this provision, provided that the person is not hired or retained by the Customer.

**11.20 Advice of Counsel.** Each person or entity executing this Agreement (a) acknowledges that this Agreement contains legally binding provisions, (b) has had the opportunity to consult with legal counsel of his, her or its choice, and (c) has either consulted legal counsel or consciously decided not to consult legal counsel.

**11.21 Entire Agreement.** The Agreement, the Schedules, the Service Guide, the SAA, WCS' acceptable use policy, tariffs, and all other documents or information at web addresses referenced in such documents and which are applicable to the Services (all of which are incorporated herein) shall represent the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other agreements, written or oral, between the Parties relating to the Services.