



# TERMS & CONDITIONS

The following Terms and Conditions (these "Terms") must be read in conjunction with the WTI Communications, Inc. ("WTI") Product Order. These Terms, together with the Product Order, and together with applicable provisions of any WTI tariffs filed with state or federal regulatory agencies and applicable rules of such agencies, constitute the complete agreement between Customer and WTI (this "Product Agreement"). As used herein, the term "Service" refers to communications and related services provided or to be provided by WTI; the term "Equipment" refers to communications and related equipment provided or to be provided by WTI; and, the term "Product" refers to both Service and Equipment.

## **ARTICLE 1. ORDERS AND OPERATION**

**1.1 Customer Order(s).** To order any Product, Customer must submit to WTI a signed Product Order ("Order") specifying the ordered Service or Equipment. WTI will be obligated to provide the Service and Equipment only upon WTI's written acceptance of the Order and Customer's submission and WTI's acceptance of any necessary letters of authorization ("LOA") required by WTI in order to enable it to act on Customer's behalf in connection with establishing Service that will replace any services furnished by existing providers. WTI may require Customer to complete and submit WTI's Credit Application prior to acceptance of an Order. WTI will notify Customer of any additional terms or conditions relating to WTI's acceptance of Customer's credit, including, without limitation, a requirement to furnish a deposit or post other security. WTI shall not be obligated to provide any Product until Customer has acknowledged its acceptance of such additional terms and conditions.

**1.2 Customer Premises.** Customer, at its sole expense, shall allow WTI access to Customer's premises to the extent reasonably determined necessary by WTI for installation, configuration, inspection, scheduled or emergency maintenance, and other activities, if any, for which WTI is responsible in connection with its provision of any Products, including a safe and secure area in which WTI's personnel, or its contractors, may perform such work. Customer will be responsible for providing and maintaining, at its sole expense, all space, cabling, electrical connections, and other facilities ("Facilities") on Customer's side of the standard telecommunications network demarcation point ("Demarcation Point") on the property at which Customer's premises is located, and the level of power and environmental conditions, that are required for proper use and operation of all Products.

**1.3 Delivery of Equipment.** WTI will use commercially-reasonable efforts to deliver all ordered Equipment in time to meet the Scheduled Installation Date set forth in the Order or, if no such date is specified, within a reasonable time. If, due to reasons within WTI's reasonable control, WTI fails to complete the delivery of ordered Equipment within sixty (60) days of the Scheduled Installation Date, Customer may cancel the applicable Order for the Equipment by providing written notice of such cancellation to WTI before the Equipment is delivered. In such case, Customer will not be liable for any cancellation or restocking charges. Customer's right to cancel the Order in the manner specified in this paragraph is Customer's exclusive remedy for WTI's failure to timely deliver any Equipment.

**1.4 Installation and Configuration of Equipment.** Customer shall be solely responsible, at its sole expense, for installing and configuring Equipment, except as otherwise expressly specified in the Order. All installation and configuration services to be performed by WTI, as specified in the Order, shall be performed in a timely, professional and workmanlike manner by qualified personnel, which may, in WTI's sole discretion, include third-party contractors. Customer must notify WTI in writing of any deficiency in WTI's performance of such installation and configuration services within thirty (30) days of the date that WTI advises Customer that the Equipment is ready for Customer's use. Upon receiving such notification from Customer, WTI will use commercially-reasonable efforts to correct such deficiency in a timely manner. Customer's right to obtain correction of any such deficiency in the manner specified in this paragraph is Customer's exclusive remedy for WTI's failure to perform its obligations under this paragraph.

**1.5 Commencement of Service.** WTI shall use commercially reasonable efforts to commence the provision of Service within WTI's normal timeframe for doing so following the latter of: (i) WTI's acceptance of the Order for such Service; or (ii) the installation and configuration of any necessary Equipment by WTI, if so specified in the Order, and to thereafter provide such Service continuously during the term of the Account Term.

**1.6 Customer Discontinuation of Existing Services.** Notwithstanding Customer's submission and WTI's acceptance of an LOA, as provided in paragraph 1.1, Customer shall be solely responsible for properly providing service discontinuation and disconnection notices to all providers of services and facilities that will be replaced by WTI Services, and will also be solely responsible for paying all charges imposed by such service providers in connection with such disconnection and discontinuation. UNDER NO CIRCUMSTANCES WILL WTI DISCONNECT OR DISCONTINUE ANY SERVICES PROVIDED BY CUSTOMER'S CURRENT SERVICE PROVIDERS.

**1.7 Support for Services.** In the event of any interruption, outage, or other defect in the performance of any Service, Customer must notify *WTI Customer Service* by calling, toll free in the U.S. (888) 425-8880, or such other number(s) for *WTI Customer Service* in other countries as are published on WTI's website at [www.WTICommunications.com](http://www.WTICommunications.com). WTI will respond to such notification and correct any such defect in Service as soon as commercially practicable. In the event that Customer reports a Service problem that is determined to be due to one or more causes on Customer's side of the Demarcation Point, Customer will be liable to WTI for WTI's premises visit charge at WTI's prevailing rate, plus WTI's charges (also at its prevailing rates) for any labor, equipment, and materials used by WTI in identifying and attempting to resolve the problem.

**1.8 Support for Equipment.** In the event Customer experiences a problem with any Equipment, Customer may request assistance from *WTI Customer Service* by calling, toll free in the U.S. (888)425-8880, or such other number(s) for *WTI Customer Service* in other countries as are published on WTI's website at [www.WTICommunications.com](http://www.WTICommunications.com). WTI will respond to Customer's request via telephone or email within one (1) business hour and will then use commercially-reasonable efforts to identify and resolve the problem remotely. Customer must provide a telephone line and suitable modem connection to the Equipment to enable WTI to provide remote support. If the problem cannot be resolved remotely, Customer may request that WTI dispatch, at Customer's expense, a qualified technician or project engineer who is familiar with the Equipment and its operation to Customer's location during normal business hours to troubleshoot the problem. Customer shall be liable to WTI for WTI's premises visit charge at WTI's prevailing rate, plus WTI's charges (also at its prevailing rates) for the services of the technician or project engineer in troubleshooting the problem and making any corrections. If it is determined that the problem is due to a defect in any equipment, including without limitation, any Equipment purchased or rented from WTI, Customer may request that WTI replace the defective equipment, in which case, Customer shall be liable to WTI for the cost of the replacement equipment (including without limitation, any Equipment purchased or rented from WTI) and any installation or configuration thereof, at WTI's prevailing rates. Customer will be solely responsible, in such event, for determining whether any defective equipment, including, without limitation, any defective Equipment, is under warranty and whether and how WTI's replacement of such equipment would affect Customer's warranty rights. WTI shall have no responsibility for any loss or diminishment of Customer's rights under any warranty, including, without limitation, any Equipment warranty, resulting from WTI's replacement of any equipment, as provided herein. All replacement equipment, including, without limitation, Equipment, will be provided on an "AS IS" basis, without warranty. Support service available from WTI does not include upgrades of software versions or repairing or arranging to have equipment repaired (including without limitation, any Equipment purchased or rented from WTI). Support services may be provided by WTI or third-party contractors selected by WTI in its sole discretion.

## **ARTICLE 2. BILLING AND PAYMENT**

**2.1 Commencement of Billing for Services.** At the time an ordered Service is ready for Customer's use, WTI will deliver to Customer a Connection Notice. Upon receipt of the Connection Notice, Customer shall have seventy-two hours to notify WTI if the Service does not conform to the Product Agreement or is not functioning properly; otherwise Customer's obligation to begin paying WTI's charges for the Service will commence as of the date of the Connection Notice. If Customer notifies WTI within the time period stated above that the Service does not conform to the specification of this Product Agreement or is not functioning properly, WTI shall correct any deficiencies in the Service and deliver a new Connection Notice to Customer, after which the process stated herein shall be repeated. In the event that Customer requests or causes a delay in the establishment of a Service, WTI may, in its reasonable discretion, commence billing for the affected Service as of the date that the Service otherwise would have been ready for Customer's use, as reasonably determined by WTI. WTI may require advance payment of any nonrecurring service establishment charges.

**2.2 Charges for Service.** The accepted Order identifies the applicable non-recurring charges and recurring charges for the Service by specifying such charges or by reference to the applicable tariff. Except for rates established by WTI's tariff, these charges shall not be subject to revision during the initial service term applicable to a Service unless Customer requests a change in the Service to which the charges apply or except to reflect increases to the rates charged to WTI by underlying carriers whose services or facilities are used by WTI to provide the Service. Switched rates identified in the accepted Order or applicable tariff apply to in-bound toll-free (e.g. 800) and outbound long distance calls that originate or terminate over switched local exchange access facilities serving the Customer's premises. Dedicated rates identified in the accepted Order or the applicable tariff apply to outbound long distance calls that originate over dedicated DS-1 or DS-3 facilities between the Customer Premises and the WTI interexchange carrier point of presence (POP).

**2.3 Non-Premier LATA Termination/Origination surcharge (80/20 rule).** The rates for in-bound toll-free and outbound long distance calls are subject to satisfaction of the following condition: no more than twenty percent (20%) of the total, combined inbound and outbound minutes of use during the applicable billing period is from or to a line served by a local exchange carrier other than AT&T, Verizon, or a local exchange carrier whose rates for exchange access are no higher than those of AT&T or Verizon. Customer will be billed a five cent (\$.05) surcharge for each minute of interstate and intrastate usage during the billing period that exceeds such twenty percent (20%) limit.

**2.4 Commencement of Billing for Equipment Rental.** Customer's obligation to pay WTI's charges for Equipment rental will begin as of the latter of: (i) the date that the Equipment is delivered to Customer's premises; and (ii) the date that Customer is obligated to begin paying for the Service, if any, for which the Equipment is required. Notwithstanding the foregoing, if WTI is responsible for installation and configuration of the Equipment, Customer's obligation to pay WTI's charges for Equipment rental will begin no earlier than the date WTI notifies Customer that the Equipment is ready for Customer's use. In the event that Customer requests or causes a delay in the installation or configuration of the Equipment by WTI, WTI may, in its reasonable discretion, commence billing for the affected Equipment rental as of the date that the Equipment otherwise would have been ready for Customer's use, as reasonably determined by WTI. WTI may require payment of installation and configuration charges in advance of any work.

**2.5 Charges for Equipment Rental.** WTI's charges for the rental of Equipment include the monthly rental charges specified in the accepted Order, plus any specified charges for installing and configuring the Equipment. In addition, Customer shall pay WTI's standard charges for handling, shipping, and insurance.

**2.6 Payment for Purchased Equipment.** Payment of the full purchase price specified in the Order for Equipment purchased by Customer, including all applicable taxes and WTI's standard charges for handling, shipping, and insurance, is due and payable at the time of sale. WTI will arrange for shipping of the equipment to Customer's premises using standard ground transportation. Customer shall pay any expedite charges if more expeditious transportation is requested. Ownership of, and title to,

purchased Equipment shall pass to Customer at the time of sale along with all risk of loss, theft, and damage.

**2.7 Early Termination Charges.** In the event that Customer cancels any Service or Equipment rental prior to the end of the minimum service term (also referred to as "Account Term") set forth in the Product Agreement, or WTI terminates the Product Agreement based on Customer's breach of any provision thereof, Customer shall immediately be liable to WTI for all charges that accrued prior to the effective time of termination, plus Early Termination Charges equal to: (a) in the case of Service, either: (i) 75% of the last six months' average billing for such Service, multiplied by the number of months remaining in the applicable Account Term; or (ii) if such Service has been in place less than 6 months or has not yet been installed, 75% of the minimum usage and monthly recurring service charges for the Service, including Applicable Taxes, multiplied by the number of months remaining in the applicable Account Term; or (b) in the case of Equipment rental, the total amount of rental payments, including Applicable Taxes, for the Equipment that otherwise would have been billed during the applicable Account Term during the remainder of the term. In addition, Customer shall be liable for WTI's standard restocking fees and all out-of-pocket costs incurred by WTI that WTI would not have incurred, but for the early termination of the Service, Equipment rental, or this Product Agreement, as the case may be. Customer and WTI agree that actual damages in the event of early termination would be difficult or impossible to determine and that the Early Termination Charges and other amounts payable under this paragraph are intended to be liquidated damages and not penalties.

**2.8 Payment of Invoices.** WTI bills in advance for Service and Equipment rental during the upcoming month, except for charges that are dependent upon usage of Service, which are billed in arrears. Except as otherwise provided herein, all payments of invoiced amounts for Service, Equipment, and other charges are due as of the date of the invoice and shall be paid within thirty (30) days of the due date. If Customer disputes any invoice, Customer must provide written notice of the basis for its dispute within such 30 day period and must also remit full payment of all amounts billed, including both disputed and undisputed amounts, within such 30 day period. In the event that Customer fails to provide such notice and pay the full amount billed by WTI within such 30 day period, the amounts billed by WTI shall conclusively be deemed correct and Customer shall conclusively be deemed to have waived any right to dispute such charges.

**2.9 Taxes and Similar Fees.** Customer shall be responsible for all applicable taxes, fees, and surcharges that WTI is required by any government agency to assess in connection with WTI's provision of Services and Equipment and shall also be responsible for amounts that WTI is permitted to bill Customer as compensation for contributions to the federal Universal Service Fund or other government-mandated programs, all of which are referred to herein as "Applicable Taxes". Customer shall also be responsible for paying all property taxes and other assessments on rented Equipment. If Customer claims to be exempt from any Applicable Taxes, Customer must, prior to the date of WTI's invoice for such taxes, provide WTI with a valid exemption certificate in a form reasonably satisfactory to WTI establishing Customer's exemption. Tax exemption certificates and updates may be sent to: WTI, 200 E. Sandpointe Ave., Suite 580, Santa Ana, CA 92707. Notwithstanding Customer's actual exemption from any Applicable Taxes, Customer shall be obligated to remit payment to WTI for all Applicable Taxes that are included on WTI's invoices to Customer prior to WTI's receipt of such exemption certificates.

**2.10 Late Payment Charges.** In the event Customer fails to timely remit payment of any amount by the date it is due, Customer shall be liable for a late payment fee on such unpaid amount accrued daily at the rate of 18% per annum from the due date until the date it is paid. In addition, Customer shall pay all reasonable costs and expenses incurred by WTI in collecting any late payment, including, but not limited to, reasonable attorney fees, expenses, and court costs.

### **ARTICLE 3. LIABILITIES AND INDEMNIFICATION**

**3.1 Disclaimer of All Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, WTI MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF ANY PRODUCT, THE MERCHANTABILITY OF ANY

PRODUCT, OR THE FITNESS OF ANY PRODUCT FOR ANY PARTICULAR PURPOSE OR USE. AS BETWEEN CUSTOMER AND WTI, ALL EQUIPMENT IS PROVIDED "AS IS."

**3.2. Assignment of Warranties.** WTI assigns to Customer all manufacturer's and supplier's warranties, if any, that are applicable to the Equipment rented or sold to Customer under this Product Agreement. WTI shall have no responsibility for the performance of any such warranties, and Customer will be solely responsible, at Customer's sole expense, for their enforcement.

**3.3 Liability for Service Interruptions and Defects.** In the event of any delay, interruption, outage, or other defect (collectively, "defect") in the establishment or provision of any Service, Customer must report the defect to WTI in accordance with paragraph 1.7. WTI, upon request and WTI's reasonable verification of such defect, will issue a credit to Customer based on the amount of the usage charge or, in the case of a defect lasting for more than 24 hours, based on the proportionate amount of the recurring charge applicable to the Service for the portion of time, following Customer's report of the defect, that the Service was affected by the defect. The issuance of such credit shall be Customer's sole remedy for any claim arising out of such defect, whether based on breach of contract or warranty, negligence, or any other act or failure to act on the part of WTI. Except as expressly provided herein, an interruption delay, interruption, outage, or other defect in the establishment or provision of any Service will not relieve Customer of its obligation to make Equipment rental payments.

**3.4 General Limitation of Liability.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, WTI AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND AFFILIATES WILL HAVE NO LIABILITY TO CUSTOMER FOR ANY LOSS, INJURY TO PERSON OR PROPERTY, LIABILITY, DAMAGE, OR OTHER HARM OF ANY NATURE THAT IS DUE TO ANY OUTAGE, FAILURE, INADEQUACY, DELAY, LACK OF SUITABILITY FOR CUSTOMER'S PURPOSES, OR OTHER DEFECT IN ANY PRODUCT OR THAT IS DUE TO WTI'S, OR WTI'S CONTRACTOR'S, PROVISION OF ANY SERVICES, IRRESPECTIVE OF WHETHER SUCH LIABILITY ARISES IN WARRANTY, TORT, BREACH OF CONTRACT, OR OTHER FORM OF ACTION, AND IRRESPECTIVE OF WHETHER SUCH LIABILITY IS DUE TO NEGLIGENCE, WHETHER PASSIVE OR ACTIVE, OR OTHER ACT OR FAILURE TO ACT BY WTI OR ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, OR CONTRACTORS; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL LIMIT OR BE CONSTRUED AS LIMITING ANY LIABILITY TO THE EXTENT SUCH LIMITATION IS UNENFORCEABLE AS CONTRARY TO LAW OR PUBLIC POLICY.

**3.5 Limitation of Damages.** EXCEPT AS PROVIDED IN SECTION 2.7 WITH RESPECT TO "EARLY TERMINATION CHARGES," NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THE PRODUCT AGREEMENT, EVEN IF THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES OR SUCH POSSIBILITY WAS OTHERWISE REASONABLY FORESEEABLE.

**3.6 Indemnification.** CUSTOMER SHALL INDEMNIFY WTI AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND AFFILIATES AGAINST, AND HOLD WTI AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND AFFILIATES HARMLESS FROM: ALL LOSS, LIABILITY, DAMAGE, AND EXPENSE, INCLUDING REASONABLE ATTORNEYS FEES, DUE TO CLAIMS ARISING OUT OF CUSTOMER'S USE OR INABILITY TO USE ANY PRODUCT; CLAIMS BY THIRD PARTIES FOR ANY LOSS, INJURY TO PERSON OR PROPERTY, LIABILITY, DAMAGE, OR OTHER HARM OF ANY NATURE ARISING OUT OF ANY OUTAGE, FAILURE, INADEQUACY, MISTAKE, OMISSION, INTERRUPTION, DELAY, OR OTHER DEFECT IN ANY PRODUCTS OR WTI'S PROVISION THEREOF; AND ANY OTHER CLAIMS, IRRESPECTIVE OF ANY NEGLIGENCE,

WHETHER PASSIVE OR ACTIVE, OR OTHER ACT OR FAILURE TO ACT ON THE PART OF WTI AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, OR AFFILIATES; PROVIDED THAT NOTHING HEREIN SHALL BE DEEMED TO REQUIRE CUSTOMER TO INDEMNIFY WTI OR ANY SUCH PERSON TO THE EXTENT, BUT ONLY TO THE EXTENT, THAT SUCH INDEMNIFICATION OBLIGATION IS UNENFORCEABLE AS CONTRARY TO LAW OR PUBLIC POLICY.

**3.7 Exclusive Remedies.** In the event of any breach by WTI of its obligations herein, Customer's exclusive remedy will be the remedy, if any, provided herein for the specific failure of performance. If no remedy is specified, WTI's liability shall be subject to the limitations of liability set forth in paragraph 3.4 and 3.5.

**3.8 Termination or Discontinuance of Service for Breach by Customer.** In the event Customer fails to pay any amount owed to WTI by the due date, whether for Service or Equipment rental provided under this Product Agreement or for any other service or reason, or in the event Customer violates any other terms and conditions of this Product Agreement, WTI, after seven (7) days' advance written notice to Customer, may, at its option, immediately: (i) terminate this Product Agreement; or (ii) restrict, suspend, or discontinue the provision of any or all services, including, without limitation, Service provided under this Product Agreement and any other services provided by WTI, without incurring liability of any nature to Customer. Any such restriction or suspension shall not relieve Customer of any obligation to pay for Service during the period such Service is restricted or suspended. WTI shall not be obligated to reinstitute full provision of any restricted or suspended Service until Customer has cured all breaches.

#### **ARTICLE 4. GENERAL TERMS**

**4.1 Term of Agreement.** This Product Agreement shall become effective on the date the applicable Order is accepted by WTI and shall remain in effect throughout the entire Account Term applicable to each Product ordered. Unless otherwise specified in this Product Agreement, the applicable Account Term for each Product shall automatically be renewed at the end of the initial Account Term for a successive Account Term that is equal in length to the original term, and shall thereafter continue to be renewed for additional successive terms of equal length unless terminated in writing by either party at least 60 days prior to the end of the then current Account Term. Upon renewal of the Account Term for a particular Product, WTI's then-current, generally-applicable rates, terms, and conditions shall apply to WTI's provision of Product for the renewal term. However, in the event that WTI intends to increase any rate applicable to a regulated intrastate California Service, such increase shall become effective only upon thirty (30) days' written notice to Customer and the Customer may, prior to the effective date of the increase, cancel the affected Service without liability for any otherwise-applicable Early Termination Charges. If the Customer does not cancel the affected Service before such date, the increase shall go into effect and the Customer shall no longer have the right to cancel such Service due to the increase without incurring early termination liability, if applicable.

**4.2 Use of Products and Customer Responsibilities.** Customer shall use all Products solely for commercial purposes and in proper manner. WTI will be entitled to inspect rented Equipment at reasonable times. Customer is solely responsible for the security of all Products, and all computers, and other customer premises equipment, and all Customer-provided or third-party services used in connection the Products that afford the potential for remote access, dialing, call completion, and similar capabilities. Customer will be liable for all misdialed and fraudulent use of toll and other services furnished by WTI or interconnected carriers or information service providers, including without limitation, fraudulent use of such services by unknown third parties using remote access features of the Products or other equipment or using dialing applications (including, without limitation, "malware" or similar applications illicitly loaded into Customer's computer equipment), or using remote access, dialing, call completion, and similar capabilities of voicemail and other services furnished to Customer.

**4.3 Force Majeure.** Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control ("Force Majeure Event"), except for obligations to make payments required

hereunder, which shall not be excused.

**4.4 Notices.** Notices hereunder shall be in writing and shall be deemed effective when actually received if delivered in person, facsimile, overnight mail or email, or when sent by First Class U.S. Mail or First Class International Post (as applicable) to WTI's principal place of business at 200 E. Sandpointe Ave. 580 Santa Ana, California 92707; facsimile (888)888-0579; email [billing@WTICommunications.com](mailto:billing@WTICommunications.com), or, if to Customer, to the address provided on the Order.

**4.5 Tariffs.** In the event that the rates, terms, or conditions set forth in this Product Agreement, as amended by new orders and change orders authorized by the Customer and accepted by WTI, conflict at any time with rates, terms, or conditions set forth in applicable WTI federal or state tariffs or applicable rules imposed by federal or state regulatory agencies, the rates, terms, and conditions of the tariffs and the applicable rules shall control. The rates, terms, and conditions of tariffed Services may change in accordance with applicable requirements of the regulatory agency having jurisdiction over the Services. If the tariffs for any Services are cancelled as a result of regulatory action during the term of this Agreement, the rates, terms, and conditions as set forth in the cancelled tariff shall nevertheless continue to apply during the remainder of the applicable, then-current service terms for the subject Services, except to reflect increases in the rates charged by underlying carriers as provided in section 2.2 of this Product Agreement.

**4.6 Additional Security.** WTI, from time to time, may make reasonable requests to Customer for information relating to its financial condition and Customer shall comply with such requests. If, at any time, WTI determines, in its sole discretion, that a change in Customer's financial condition or credit status may impair WTI's ability to receive timely, full payment of its charges, WTI may notify Customer of such determination and require Customer, within ten (10) days, to furnish a deposit or other security, in an amount and form determined by WTI in its sole discretion, as a condition to continued provision of the Products.

**4.7 Title to Rented Equipment; Customer Maintenance Obligations; Risk of Loss; Return.** Notwithstanding that any Equipment rented under this Product Agreement may be a fixture on the premises at which it is located, WTI retains all ownership rights, title, and interest in and to such Equipment. Customer is strictly prohibited from encumbering any Equipment rented under this Product Agreement or in any way granting any interest in the Equipment to any third party. WTI may require markings to be affixed to the Equipment to identify it as property of WTI. Customer must keep such Equipment free from any markings or labeling that could be interpreted as indicating ownership thereof by Customer or a third party. Without the prior written consent of WTI, Customer must not assign, lend, transfer, or sublease any such Equipment, permit to exist any security interest, lien or encumbrance with respect to any such Equipment, or cause or permit any of such Equipment to be moved from the location specified in the applicable Order. Customer shall, at all times, be solely responsible, at its sole expense, for maintaining the Equipment in good condition and for making any necessary repairs to, or obtaining necessary replacement of, all Equipment. Customer shall bear the risk of any loss, theft, damage, or destruction to the Equipment during the applicable Account Term and until the Equipment is returned to WTI. Customer must obtain and maintain at its sole expense insurance against the loss of or damage to all such Equipment, including, without limitation, loss by fire or other casualty. Customer acknowledges that WTI may lease the Equipment from, or pledge any or all of its rights in the Equipment to, any entity or other financing source (each a "Lessor") and Customer must comply with any and all directions from such Lessor regarding the Equipment, including releasing the Products to Lessor upon written request. Customer hereby irrevocably authorizes WTI and any Lessor to file and record such Uniform Commercial Code conditional security and fixture statement(s), amendments and continuations, and other recordation documents as WTI or the Lessor deems prudent to confirm and maintain WTI's and the Lessor's interests in

the Equipment. Customer shall be responsible, at its sole expense, upon expiration of the applicable Account Term to return rented Equipment to WTI in good repair, condition, and working order, ordinary wear and tear excepted.

**4.8 Non-Disclosure.** No information or documentation disclosed between the parties during the performance of this Agreement shall be disclosed to any third party.

**4.9 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California, U.S.A., without regard to its choice of law rules. In the event of a dispute arising here from, such dispute shall be resolved in binding arbitration, before the American Arbitration Association in Orange County, California.

**4.10 Entire Agreement.** This Product Agreement, including any documentation executed or incorporated herein, constitutes the entire and final agreement and understanding between the parties with respect to the Products covered by this Product Agreement and supersedes all prior agreements relating to the Products, which are of no further force or effect. This Product Agreement and any of the documentation associated herewith may not be amended without the express written consent of both parties.

**4.11 Severability.** If any provision of this Product Agreement is declared upon arbitration, or by a court or regulatory agency of competent jurisdiction, to be invalid or unenforceable under applicable law, said provision shall be ineffective only to the extent of such invalidity and shall not affect the remaining provisions of this Product Agreement.

**4.12 Third Party Beneficiaries.** This Product Agreement shall only be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns, and nothing in this Product Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Product Agreement.

**4.13 Survival.** The provisions in this Product Agreement regarding limitations of liability, indemnification, warranties, termination liability, title and responsibility for rented Equipment, and other provisions reasonably intended to survive termination of this Product Agreement, or that are reasonably related to the interpretation and enforcement of such provisions, shall be deemed to survive the termination of this Product Agreement.

**4.14 Counterparts.** This Product Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile signatures shall be sufficient to bind the parties to this Product Agreement.

**4.15 Service Guarantee.** Notwithstanding anything to the contrary contained in this Product Agreement, Customer may terminate any Service subject to this Product Agreement without any further obligation if the Service is not substantially performing up to industry standards during the first 90 days the Service is available for Customer's use. If Customer elects to terminate a Service pursuant to this guarantee, WTI will reimburse Customer for reasonable costs incurred by Customer to reestablish service with its previous service provider; provided that, the amount of reimbursement payable by WTI shall not exceed the amount paid to WTI for installation of the Service. This Service guarantee only applies if (a) the cause of the Service deficiency is within WTI's reasonable control (b) Customer ordered at least the amount of Services recommended by WTI to meet Customer's traffic volumes and (c) WTI fails to correct the Service deficiency within 15 days after receiving written notice from Customer of the deficiency given during the 90 day period.

X: \_\_\_\_\_