

## NON-VOTING MEMBERSHIP AGREEMENT

**This Non-Voting Membership Agreement** (this "Agreement") is made and entered by and between WIRELESS DATA SERVICE PROVIDER CORPORATION ("WDSPCO"), a nonprofit corporation organized and existing under the laws of the State of Georgia and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter "Member").

**WHEREAS**, WDSPCO has been organized to serve as a nonprofit trade association for the purpose, among other things, of promoting the interoperability of wireless data systems and the mobility of wireless data customers; and

**WHEREAS**, WDSPCO has negotiated and entered into a Network Information Center Agreement ("NIC Agreement") with a third-party service provider to establish and operate a Network Information Center (the "NIC"), and may enter into an agreement with another party to establish and operate a Network Operations Center (the "NOC"), each for the benefit of members of WDSPCO; and

**WHEREAS**, Member desires to become a Non-Voting Member (as defined in the Bylaws of WDSPCO) upon the terms and subject to the conditions set forth in this Agreement, and shall have the rights afforded a Service-Only Member as set forth in Section 3.3(c) of the Bylaws of WDSPCO.

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

### **Section One** **Acknowledgments and Representations**

1.1 **Acknowledgments**. Member acknowledges that, prior to the execution of this Agreement, it has had the opportunity to ask questions of and receive answers or obtain additional information from a representative of WDSPCO concerning the financial and other affairs of WDSPCO and the duties and obligations associated with being a member of WDSPCO, and, to the extent it believes necessary in light of its knowledge of WDSPCO's affairs, it has asked such questions and received satisfactory answers. Member has carefully read this Agreement and, to the extent it believes necessary, it has discussed the representations, warranties and agreements which it makes by signing this Agreement with its counsel and representatives of WDSPCO.

1.2 **Nonprofit Corporation**. Member understands and acknowledges that WDSPCO has been organized as a nonprofit corporation and that no part of the net earnings of WDSPCO shall inure to the benefit of, or be distributable to Member. All amounts paid by or on behalf of Member to WDSPCO shall constitute dues, fees or assessments related to membership in WDSPCO and shall not be deemed as an investment or purchase of any ownership interest in WDSPCO.

1.3 **Non-Voting Membership Status**. Member understands and hereby acknowledges that it shall have the status of a Service-Only Member in WDSPCO and shall have only the rights afforded a Service-Only Member as set forth in Section 3.3(c) of the Bylaws of WDSPCO.

1.4 **Purpose**. Member acknowledges that there is presently a finite number of Internet Protocol ("IP") addresses and that, in order to ensure that the IP addresses are allocated in

an equitable manner, control over the allocation process must be centralized. Member further acknowledges that interoperability between and among facilities-based wireless data service providers is an essential element of wireless data technology and service. Through its membership in WSPCO, Member seeks to promote the interoperability of wireless data systems in general, which, in turn, will benefit the interests of Member.

1.5 No Guarantees. Member understands and acknowledges that WSPCO has a limited supply of unallocated IP addresses and that the American Registry for Internet Numbers ("ARIN") has not agreed, at this time, to provide WSPCO with any additional IP addresses. Member also understands and acknowledges that WSPCO will need to manage actively its remaining unallocated IP addresses to ensure that they are not prematurely depleted. WSPCO expressly disclaims any representations or guarantees as to how long WSPCO's supply of unallocated IP addresses will last and as to how many IP addresses will be made available to Member.

1.6 Representations. Member represents and warrants to WSPCO as follows:

1.6.1 The principal office of Member is at the address shown under the signature of Member's authorized representative at the bottom of this Agreement.

1.6.2 Member has received and reviewed the Articles of Incorporation and Bylaws of WSPCO and understands its duties and obligations associated with membership in WSPCO.

1.6.3 Member meets the qualifications for Non-Voting Membership set forth in the Bylaws of WSPCO.

## **Section Two** **License of Software Rights**

2.1 License. Member hereby grants to WSPCO, a non-exclusive, fully-paid, irrevocable, worldwide and royalty-free license in and to any and all rights it may have, if any, in: (i) the software previously developed and all future software to be developed by other parties for the benefit of WSPCO; (ii) the software previously developed for the benefit of WSPCO and all future software to be developed by other parties exclusively in connection with the services performed pursuant to the NIC Agreement, or specifically requested by WSPCO under the NIC Agreement, including modifications, customizations and enhancements to such software (the "Network Software"), in both machine-readable object code and source code form; and (iii) the following items which, collectively shall be defined as "Works":

(a) The IP and CLNP Routing Architecture and Addressing Plan (Version 1.0), dated July 8, 1994;

(b) Unique Identifiers Name and Numbering Standards Plan (Version 1.0), dated June 24, 1994;

(c) Unique Identifiers Name and Numbering Plan for Administration of Unique WSPCO Identifiers (Version 1.0), when approved;

(d) Unique Identifiers Name and Numbering Plan - Database System for Tracking Assignments (Version 1.0), dated June 24, 1994; and

(e) Any and all future IP and CLNP Routing Architecture and Addressing Plans, or Unique Name and Numbering Plans created for the benefit of WDSPCO.

Nothing in this Agreement shall limit the Member's independent right to use, copy, distribute or modify the Works or the Network Software.

2.2 New Materials. WDSPCO, both directly and through its employees, agents and contractors, may modify the Works and the Network Software and create derivative works based thereon. As between WDSPCO and a Member, the ownership of any and all new copyrightable works created by WDSPCO, or its employees, agents or contractors, shall vest in WDSPCO.

2.3 Disclaimer of Warranty. **THE WORKS AND THE NETWORK SOFTWARE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. MEMBER DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE NETWORK SOFTWARE WILL MEET WDSPCO'S REQUIREMENTS OR THAT THE OPERATION OF THE NETWORK SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK AS TO THE SELECTION, QUALITY, AND PERFORMANCE OF THE NETWORK SOFTWARE IS WITH WDSPCO. SHOULD THE NETWORK SOFTWARE PROVE DEFECTIVE, OR THE NETWORK SOFTWARE OR WORKS ACTUALLY OR ALLEGEDLY INFRINGE ANY PATENT, TRADEMARK, TRADE SECRET, COPYRIGHT, OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY, WDSPCO (AND NOT THE MEMBER) ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICE, REPAIR, OR CORRECTION AND ALL LIABILITY FOR THIRD PARTY CLAIMS, INCLUDING THE COST OF DEFENDING SUCH CLAIMS.**

2.4 No Money Damages. **IN NO EVENT WILL MEMBER BE LIABLE TO WDSPCO OR ANY OTHER PARTY FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE WORKS OR THE NETWORK SOFTWARE, EVEN IF MEMBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY CLAIM BY ANY OTHER PARTY.**

### **Section Three Member's Covenants And Obligations**

3.1 WDSPCO Domain Name and IP Addresses. Member hereby acknowledges and agrees that the Internet domains "WDSPCO.org" and "CDPD.net" have been established for the benefit of wireless data and CDPD service providers generally, and that the IP addresses currently allocated for use by WDSPCO, as well as any other addresses that may be obtained in the future by WDSPCO, whether directly, or through the operator of the NIC or any other party acting on behalf of WDSPCO, have been and will be controlled by WDSPCO and allocated to its members for their use in providing wireless data and CDPD services. Member hereby assigns to WDSPCO any and all right, title or other ownership or proprietary interest in the WDSPCO.org and CDPD.net domain names and the IP addresses and agrees not to challenge, contest, or otherwise interfere with WDSPCO's use of the WDSPCO.org and CDPD.net domain names or the authority of WDSPCO to allocate, assign, register, and manage the IP addresses.

3.2 Delegation of Authority and Responsibilities. By executing this Agreement, Member irrevocably agrees that, unless otherwise approved by WDSPCO, or unless WDSPCO is

dissolved or otherwise ceases to exist, WDSPCO shall be the exclusive body for obtaining, allocating, assigning, re-assigning, administering, and exchanging IP and Connectionless Network Protocol ("CLNP") addresses and WDSPCO unique names and numbers for and among the members of WDSPCO and their affiliates for use in providing wireless data services through CDPD technology. With respect to IP addresses, CLNP addresses, and WDSPCO unique names and numbers to be used by Member and its affiliates for use in providing wireless data through other technologies (authorized under the Bylaws), the foregoing exclusivity requirement shall not apply. The foregoing notwithstanding, Member remains responsible for assigning and managing IP and CLNP addresses and WDSPCO unique names and numbers for and among its licensed, facilities-based customers, in a manner that is consistent with any commercially reasonable rules, policies, and procedures established by WDSPCO and applicable to Member. Member shall ensure compliance with the rules, policies, and procedures established by WDSPCO and relating to the IP and/or CLNP addresses by all affiliates of Member that use IP or CLNP addresses obtained from WDSPCO or its agents or contractors (including the operator of the NIC). WDSPCO may delegate this authority and responsibility among its members or to such third parties as WDSPCO may deem appropriate from time to time, including without limitation, to the operator of the NIC, or to the operator of the NOC.

3.3 Allocation and Use of IP Addresses; Audit Rights. Member shall, during the course of each twelve-month period following the date of its initial allocation of IP addresses, assign at least fifty (50) percent of the IP addresses allocated to such Member to its customers or customers of its affiliates. If Member, either directly or through its affiliates, fails to assign at least fifty (50) percent of its allocated IP addresses to its customers or its affiliates' customers during the course of any twelve-month period, WDSPCO, acting directly or through the operator of the NIC, shall have the right to require Member and its affiliates to immediately return all or any portion of Member's unassigned IP addresses to WDSPCO or the NIC for the benefit of WDSPCO. The operator of the NIC shall have the right, pursuant to a non-disclosure agreement, to have its representatives audit Member and its affiliates as to the actual population and customer base of Member's and its affiliates' service areas, and the return of IP addresses by Member shall not affect the right to conduct such an audit. The operator of the NIC shall notify the WDSPCO of any misuse of allocated IP addresses by Member or its affiliates, and WDSPCO and the operators of the NIC and the NOC may, in their discretion, deny allocation or usage of IP or CLNP addresses to or by Member and its affiliates until such time as such misuse is corrected. WDSPCO and the operators of the NIC and the NOC may from time to time adopt commercially reasonable rules, policies and procedures governing use of IP or CLNP addresses. Member shall be provided with notice of the adoption of any such rules, policies, or procedures. Member may use no more than five (5) percent of its total IP and CLNP addresses for network infrastructure. If Member or its affiliates use any IP or CLNP address or WDSPCO unique names for purposes other than in connection with wireless mobile units (subject to the five (5) percent allowance for network infrastructure set forth herein) or uses such IP or CLNP addresses or WDSPCO unique names other than in accordance with the Bylaws, policies, procedures, plans, rules and determinations made by WDSPCO, its Board of Directors (the "Board of Directors") or committees thereof (collectively, the "Rules"), WDSPCO shall have the right to require Member and its affiliates, immediately upon the request of WDSPCO, to return to WDSPCO all such misused IP and CLNP addresses and WDSPCO unique names and assigned to them by WDSPCO or the operator of the NIC or the NOC. Any right provided hereunder shall be exercised by WDSPCO in a reasonable, nonarbitrary, and nondiscriminatory manner. Once each year, no later than December 1, Member shall provide the NIC with an inventory of the Member's allocated IP addresses, indicating the technology used for each IP address block (i.e. CDPD, GSM/GPRS, UMTS, Satellite, WCDMA, etc.) and a one-year forecast of expected address space requirements.

3.4 Bylaws, Rules and Policies. Member shall perform its obligations as a Service-Only Member of WDSPCO and comply with the Rules with respect to all matters concerning the responsibilities and authority delegated by the members to WDSPCO, as set forth in the Articles of Incorporation and Bylaws of WDSPCO, including but not limited to: (i) obtaining, allocating, assigning, administering and exchanging IP and CLNP addresses and WDSPCO unique names and numbers, and (ii) procedures for standardized data collection and data transfer between WDSPCO infrastructure equipment and the members' systems, including billing, settlement, activation, deactivation and other systems that facilitate interoperability. Any such Rules will be reasonable, nonarbitrary and nondiscriminatory.

3.5 Payment of Dues and Expenses. As a member of WDSPCO, Member shall pay, in accordance with this Agreement and the Rules, all dues, fees, expenses and assessments imposed or levied by WDSPCO; provided, however, that such dues, fees, expenses, and assessments shall not exceed the cumulative amount of \$60,000 in any fiscal year.

3.5.1 Annual Dues. Annual membership dues, if any, of WDSPCO shall be determined by the Board of Directors from time to time. Member shall pay dues annually or in such other manner as may be established by the Board of Directors. Member shall receive notice, prior to the beginning of each Calendar Year, of the amount of dues it is responsible to pay during such calendar year.

3.5.2 NIC & NOC Fees as Part of Membership Dues. Payment by Member of its membership dues, in accordance with Section 3.5.1, shall satisfy any of its obligations with respect to fees paid for use of the NIC or the NOC. Subject to the terms of this Agreement and the Rules, Member shall be entitled to receive the rights and benefits made available to the members of WDSPCO generally, under agreements between WDSPCO and the operator of the NIC with respect to the establishment and operation of the NIC, and, if WDSPCO establishes the NOC, between WDSPCO and the operator of the NOC (collectively, the "NIC & NOC Agreements"). Member acknowledges that the services provided under the NIC & NOC Agreements will be of direct and material benefit to Member and its affiliates, and that such services are essential to the availability and interpretability of wireless data services. Member, in its discretion, may contract with any party for additional NIC and NOC services.

3.5.3 Extraordinary Expenses. Subject to the \$60,000 cap set forth in Section 3.5, if WDSPCO or its agent incurs any extraordinary or unanticipated expenses ("Extraordinary Expenses") in connection with the operation of WDSPCO (including any liabilities or obligations to members, officers, directors or agents of WDSPCO, or in connection with the administration of the NIC & NOC Agreements, such as having to find a replacement for the operator of the NIC or the NOC), Member agrees to reimburse WDSPCO or its designee (as appropriate) for the Member's share (assessed pro rata based on the percentage of allocated IP addresses allocated to Member) of such liabilities, obligations or expenses following receipt of invoice for the same, such invoice to be accompanied by a statement from WDSPCO or its agent summarizing the circumstances that required WDSPCO or its agent to incur such liabilities, obligations or expenses.

3.5.4 Contribution Obligations. If any member of WDSPCO fails to pay any amount invoiced with respect to any extraordinary liability or expense pursuant to Section 3.5.3, Member shall pay, at the request of WDSPCO, its share (assessed pro rata based on the percentage of allocated IP addresses allocated to Member) of the amount not paid by the defaulting member or members. WDSPCO shall use commercially reasonable efforts to collect amounts not timely paid by any member; however, that Member's obligation to pay its pro rata share of the amounts not paid by the other

members is not contingent upon any collection efforts of WDSPCO. In the event that WDSPCO collects any previously unpaid amount that has been paid in part by Member, WDSPCO or its agent will credit subsequent invoice(s) sent to Member a proportionate share of the amount collected from the defaulting member or members, reduced by the costs of collection (including attorneys' fees and expenses).

3.5.5 Billing Agent. WDSPCO may designate from among its members or engage a third party to invoice and collect amounts due and payable to WDSPCO (the member or third party so designated by WDSPCO, if any, is referred to herein as the "Billing Agent"). As between Billing Agent and Member, Billing Agent shall have the authority to act on behalf of WDSPCO with respect to the billing and collection of annual dues and all other amounts payable to WDSPCO pursuant to this Agreement and the Rules. Member agrees that Billing Agent shall be entitled to exercise all rights and remedies available to WDSPCO in the collection of amounts due hereunder, either independently or in the name and on behalf of WDSPCO. All checks or other forms of payment shall be made payable to the Billing Agent or WDSPCO, as directed by Billing Agent in its invoice.

3.5.6 Invoices and Payment. Member's annual dues and any of its pro rata share of Extraordinary Expenses shall be invoiced as determined from time to time by WDSPCO. Invoices submitted by WDSPCO, or its Billing Agent, shall be due and payable within thirty (30) days from the date of invoice. Any amounts invoiced under this Agreement that remain unpaid following the date due shall bear interest at the rate of 1.5% per month, or the highest rate allowed by law, whichever is less, from the due date until the date of payment. Member's obligation to pay amounts invoiced under this Agreement is unconditional and shall not be subject to any setoff or deduction whatsoever.

3.5.7 Creation of Escrow Fund. WDSPCO may, in its discretion, create a fund (the "Extraordinary Expense Fund") for the purpose of paying any Extraordinary Expenses incurred by WDSPCO. If created, the Extraordinary Expense Fund will be funded by the deposit therein of excess cash holdings of WDSPCO, as determined by WDSPCO's Board of Directors at the end of each fiscal year. If created, the Extraordinary Expense Fund shall be invested as determined by the Board of Directors, which may include investment through a qualified investment management firm.

## **Section Four** **Obligations of WDSPCO**

4.1 NIC & NOC Services. WDSPCO will use commercially reasonable efforts to make the benefits of the NIC services available to Member and its affiliates. If WDSPCO authorizes the establishment and operation of the NOC, WDSPCO will use commercially reasonable efforts to make the benefits of the NOC services available to Member and its affiliates. WDSPCO agrees to pay the amounts becoming due to the operators of the NIC and the NOC pursuant to the NIC & NOC Agreements.

## **Section Five** **Termination and Suspension of Membership or Services**

5.1 Termination by Member. Member may terminate its membership in WDSPCO and its obligations under this Agreement effective upon thirty (30) days' advance written notice to the Board of Directors of WDSPCO; provided, however, that such termination shall have the effect specified in Section 5.3 and such termination shall not relieve Member of any liabilities or

obligations incurred prior to the effective date of termination; provided further, that a Member shall not be liable for any dues assessed, but not yet payable.

5.2 Termination by Corporation. Member shall be in default under this Agreement if Member: (a) fails to adhere to any Rules relating to: (i) the assignment of unique WDSPO names or identifiers; (ii) the allocation, assignment, management and registration of IP, CLNP and other addresses used to identify WDSPO network entities; or (iii) data collection and data transfer between WDSPO infrastructure equipment, and the members' systems, including billing, settlement, activation, deactivation and other systems that enable interoperability; and such failure has a significant adverse effect on the availability of IP or CLNP addresses, the interoperability of WDSPO systems, or the ability of the operator of the NIC or the NOC to perform its services for any other member; (b) fails to pay any dues or other amount payable to WDSPO, or its Billing Agent, within thirty (30) days following the date of invoice; (c) otherwise breaches this Agreement; or (d) fails to enter into a new form of Voting Membership Agreement, as approved by the Board of Directors in accordance with Section 5.4 within the time period set forth therein. If Member fails to remedy any such default within thirty (30) days following written notice of default from WDSPO or, in the case of non-payment, the Billing Agent, WDSPO may terminate Member's membership in WDSPO or suspend services provided, directly or indirectly, to Member or its affiliates. WDSPO's right to terminate Member's membership in WDSPO or suspend services are in addition to any other rights and remedies that may be available, whether at law, in equity or otherwise. Additional causes for termination may be set forth in the bylaws of WDSPO, as amended from time to time.

5.3 Suspension and Termination of NIC & NOC Services. If Member's membership in WDSPO is terminated for any reason, or if Member's right to receive services are suspended, then WDSPO, with or without the cooperation of other members, or any operator of the NIC and/or the NOC, may take any or all of the following actions, all without liability to Member or its affiliates:

- (i) Immediately suspend or terminate all services to Member and its affiliates being delivered by WDSPO or the NIC or the NOC;
- (ii) Cause the unique identifiers and names and the IP and CLNP addresses that have been assigned to such Member, its affiliates and their respective customers to be deactivated and/or assigned to other members;
- (iii) Cause Member's access to and use of the {WDSPO.org and CDPD.net} domain names and associated domains to be terminated and/or blocked; and
- (iv) Take such other action as may be necessary to prevent Member from receiving or otherwise enjoying the benefits of the services provided by WDSPO and the NIC and the NOC.

Member hereby consents and agrees that WDSPO shall be entitled to direct the operator of the NIC or the NOC to transmit messages to or otherwise communicate with other members to inform them as to the unavailability of service, and that the operators of the NIC and the NOC may take such action as the Board of Directors, or its designees, may request with respect to the blocking or other disabling of interoperability with Member once the Board of Directors has suspended or terminated NIC or NOC services in accordance with this Agreement.

5.4 Termination of Membership Agreement. WDSPO shall have the authority to promulgate a new form of Non-Voting Membership Agreement upon approval by at least a two-thirds (2/3) majority vote of the Board of Directors. Upon the Board's approval of a new form of Non-Voting Membership Agreement, Member shall execute the new form of agreement within ten (10) days of its presentation by the Board, whereupon this Agreement shall terminate.

5.5 Nondiscrimination. The rights provided for in Section 5.2 and 5.3 hereof shall be exercised in a reasonable, nondiscriminatory and non-arbitrary manner.

**Section Six**  
**Limitations of Liability and Indemnification**

6.1 Limitations of Liability. MEMBER AGREES THAT IN NEGOTIATING, EXECUTING AND PERFORMING UNDER THE NIC & NOC AGREEMENTS, OR IN OTHERWISE SUPERVISING AND ADMINISTERING THE ESTABLISHMENT AND CONTINUED OPERATION OF THE NIC & NOC, OR IN EXERCISING ITS RIGHTS AND AUTHORITY UNDER THIS AGREEMENT OR THE RULES, NEITHER WDSPCO, NOR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF WDSPCO (SPECIFICALLY INCLUDING THE BILLING AGENT), NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, PARTNERSHIPS, INTEREST HOLDERS, OR AGENTS, SHALL, BY VIRTUE OF THIS AGREEMENT OR THE ARRANGEMENTS DESCRIBED HEREIN, HAVE ANY FIDUCIARY OBLIGATION TO MEMBER OR ANY OF ITS AFFILIATES. NEITHER WDSPCO, NOR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF WDSPCO (SPECIFICALLY INCLUDING THE BILLING AGENT), NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, SHALL INCUR ANY LIABILITY OR OBLIGATION TO MEMBER OR ANY OF ITS AFFILIATES FOR ANY ACTION OR INACTION (INCLUDING NEGLIGENCE) IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR IN EXERCISING ANY RIGHTS AFFORDED HEREUNDER, INCLUDING ANY ACTION TAKEN TO TERMINATE THE NIC & NOC AGREEMENTS OR THE TRANSFER OF OPERATION OF THE NIC AND/OR NOC TO ANOTHER VENDOR OR VENDORS, OR EXERCISING THE RIGHTS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE RIGHTS SET FORTH IN SECTION 5.3 HEREOF, OR FAILING TO TAKE ANY ACTION AGAINST OTHER MEMBERS. THE FOREGOING SHALL NOT RELIEVE ANY PARTY FROM LIABILITY FOR ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

NEITHER WDSPCO, NOR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF WDSPCO (SPECIFICALLY INCLUDING THE BILLING AGENT), NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, PARTNERSHIPS, INTEREST HOLDERS, OR AGENTS, MAKES ANY REPRESENTATIONS OR WARRANTIES REGARDING THE QUALITY OR AVAILABILITY OF SERVICES TO BE PROVIDED BY ANY OPERATOR OF THE NIC OR THE NOC, NOR THE AVAILABILITY OF IP OR CLNP ADDRESSES OR WDSPCO SERVICE IN GENERAL. NEITHER WDSPCO, NOR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF WDSPCO (SPECIFICALLY INCLUDING THE BILLING AGENT), NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, PARTNERSHIPS, INTEREST HOLDERS, OR AGENTS, SHALL BE LIABLE FOR ANY ACTS OR OMISSIONS OF ANY OPERATOR OF THE NIC OR THE NOC, OR FOR ANY MEMBER'S OR ITS AFFILIATES USE OF, OR INABILITY TO USE, ANY OF THE SERVICES PROVIDED BY THE NIC OR THE NOC.

IN NO EVENT SHALL WDSPCO, OR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF WDSPCO (SPECIFICALLY INCLUDING THE BILLING AGENT), OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, PARTNERSHIPS, INTEREST HOLDERS, OR AGENTS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER BASED UPON BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER

LEGAL THEORY. IN NO EVENT SHALL THE LIABILITY OF WDSPCO, OR ANY MEMBER OR AGENT ACTING AT THE REQUEST OR ON BEHALF OF WDSPCO (SPECIFICALLY INCLUDING THE BILLING AGENT), OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, PARTNERSHIPS, INTEREST HOLDERS, OR AGENTS, TO MEMBER OR ANY AFFILIATE OF MEMBER FOR ANY CLAIMS, DAMAGES OR LOSSES ARISING OUT OF THIS AGREEMENT OR ANY AGREEMENT UNDER WHICH WDSPCO IS LIABLE EVER EXCEED THE AMOUNT THAT EQUALS MEMBER'S ANNUAL DUES IN ANY FISCAL YEAR.

6.2 Indemnification. Member shall indemnify and hold WDSPCO and all members or agents acting at the request or on behalf of WDSPCO (specifically including the Billing Agent), and their respective officers, directors, employees, partnerships, interest holders, and agents harmless from any and all claims (including claims of other members and third parties), damages, demands, liabilities, suits, actions, recoveries and judgments of every nature and description, including attorney's fees and expenses and court costs (individually a "Loss" and collectively, "Losses"), arising out of or resulting from (a) any and all contractual liabilities and obligations of WDSPCO, including its liabilities and obligations under the NIC & NOC Agreements, (b) any membership agreement with another member or members of WDSPCO, and (c) any act or omission by WDSPCO, or any member or agent acting at the request or on behalf of WDSPCO (specifically including the Billing Agent), and their respective officers, directors, employees, partnerships, interest holders, and agents, in connection with exercise, performance or non-performance of any rights, responsibilities, authority or obligations of WDSPCO, whether arising under the Articles of Incorporation of WDSPCO, the Rules, this Agreement, the NIC & NOC Agreements, or any other agreement or arrangement to which WDSPCO is party or by which it is bound; provided, however, Member shall have no obligation to indemnify WDSPCO for WDSPCO's willful misconduct or gross negligence; provided, further, that WDSPCO shall not seek indemnification from any Member for a Loss until WDSPCO has paid toward such Loss or Losses: (i) the maximum amount that it received from any insurance policy obtained for the purpose of paying Losses; and (ii) all available amounts in the Escrow Fund, if established. In addition to the limitation set forth in Section 6.1, the obligation of Member to pay any particular Loss is limited to Member's pro rata share of the aggregate Loss determined based on the percentage of allocated IP addresses allocated to Member on the date on which the events or circumstances giving rise to the Loss occurred (or failed to occur).

6.3 Third Party Beneficiaries. The limitations of liability and indemnification obligations set forth in this Section 6 shall inure to the benefit of all members or agents of WDSPCO acting at the request or on behalf of WDSPCO (specifically including the Billing Agent), and their respective officers, directors, employees and agents, each being an intended third party beneficiary of the provisions of Section 6 of this Agreement.

6.4 Survival. The limitations and obligations set forth in this Section 6 shall survive the termination of this Agreement, regardless of the cause.

## **Section Seven Miscellaneous And General**

7.1 Notices. Any notices required or permitted to be given or made under this Agreement shall be in writing. Such notices shall be deemed to be duly given on the earliest of: (i) actual receipt, irrespective of whether communicated in person, by telephonic facsimile, telegraph, teletype, electronic mail or other form of wire or wireless communication, or by mail or private carrier or other method in which the writing read by the recipient; or (ii) on the fifth day after mailing by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to WDSPCO:

Wireless Data Service Provider Corporation  
73 Old Dublin Pike, Suite 10 #315  
Doylestown, PA 18901  
USA

If to Member:

to the address shown under the signature of Member's authorized representative at the bottom of this Agreement

Either Member or WDSPCO may from time to time change its address for notification purposes by giving the other party written notice of the new address and the date upon which it will become effective.

7.2 Assignment. Subject to any limitations set forth in the Bylaws of WDSPCO, Member shall be entitled to assign its rights and obligations under this Agreement to any affiliated corporation or other business entity and to any successor, by sale, merger or other business combination, to all or substantially all of its business and assets relating to wireless data services, provided the successor assumes all obligations of Member under this Agreement and agrees in writing to be bound hereby.

7.3 Remedies. Member acknowledges that any violation of this Agreement, the NIC or NOC Agreements or the Rules (collectively, the "Agreements") will cause imminent and irreparable harm to the other members and that money damages are not an adequate remedy. Member, therefore, agrees that WDSPCO shall be entitled to an injunction enjoining, prohibiting and restraining Member from the continuance of any such violation, in addition to any monetary damages which might occur by reason of a violation of any of the Agreements or any other remedies at law or in equity, including without limitation specific performance.

7.4 Arbitration of Disputes. Any dispute between Member and WDSCPO arising out of or relating to this Agreement shall be settled by binding arbitration in accordance with the J.A.M.S./ Endispute Arbitration Rules and Procedures (the "Endispute Rules"), as amended by this Agreement. Such arbitration shall be held in Atlanta, Georgia. Member and WDSPCO shall jointly select three (3) independent arbitrators; provided, however, that if Member and WDSPCO cannot agree on three (3) independent arbitrators, the selection shall be made by J.A.M.S./ Endispute in accordance with the Endispute Rules. Any award entered by the arbitrators shall be conclusive and binding on the parties hereto. The costs of the arbitration, including the fees and expenses of the arbitrators, shall be shared equally by Member and WDSPCO unless the arbitration award provides otherwise. The limitations of liability set forth in Section 6.1 shall apply in any such arbitration and shall limit the arbitrators' authority to award any damages precluded by Section 6.1.

7.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, except for the choice of law provisions thereof to the extent that they would make another law applicable to this Agreement.

7.6 Interpretation. The section headings in this Agreement are for reference and convenience only and will not enter into the interpretation hereof. All pronouns and nouns will be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require. Except as otherwise specified in this Agreement, use of the term "including" will not be interpreted to be an exclusive reference. Each party acknowledges that it has received independent legal advice regarding this Agreement and

understands the obligations it undertakes by becoming a party hereto. Accordingly, each party agrees that in any dispute regarding the interpretation or construction of this Agreement, no presumption should operate in favor of or against any party hereto by virtue of its role in drafting or not drafting the terms and conditions set forth herein.

7.7 No Waiver. No delay or omission by any party hereto to exercise any right or power under this Agreement will impair such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof will not be construed as a waiver of any succeeding breach thereof or of any other covenant herein contained.

7.8 Severability. If any provision of this Agreement or the application thereof to any person or circumstance is, to any extent, held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions or applications of the Agreement shall in no way be affected or impaired thereby.

7.9 No Agency. This Agreement is not intended to nor does it create or establish any partnership, joint venture, agency or other joint business relationship among the members or any of their affiliates. Except as expressly provided herein, no party to this agreement is the legal representative of the other and shall not have any authority to obligate the other (or any affiliate) for any purpose whatsoever.

7.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.11 Entire Agreement. Member acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that this Agreement is the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof, except for the other agreements and documents referenced herein. This Agreement supersedes and merges all prior proposals, understandings and all other agreements, oral and written, among the parties relating to the subject matter of this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by an authorized representative of each party; however, WDSPCO shall be entitled to modify, amend, repeal and adopt new Rules. Notice of such new Rules shall be provided to Member as required by Section 3.3 of this Agreement or the Bylaws of WDSPCO. Any attempted or purported amendment, modification or waiver that does not comply with this requirement shall be null and void.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the date indicated below as being accepted on behalf of WDSPCO.

**Member:**

\_\_\_\_\_

By: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Address for Notice:

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Attn: \_\_\_\_\_

Agreed and Accepted on behalf of **Wireless Data Service Provider Corporation:**

By: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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