

## SMART CITY

### MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (“MSA”) is entered into as of the effective date of the Customer Work Order (“CWO”) that this MSA is a part of between **SMART CITY NETWORKS, Limited Partnership**, a Florida limited liability company (“**SMART CITY**”), and CUSTOMER who shall be more fully described in the CWO (“**CUSTOMER**”).

#### ARTICLE 1. DEFINITIONS

1.1. “Affiliate” shall mean an entity that now or in the future, directly or indirectly controls, is controlled by, or is under common control with, a Party to the Agreement. For purposes of the foregoing, “control” shall mean the ownership of (i) greater than fifty percent (50%) of the voting power to elect the directors of the company, or (ii) greater than fifty percent (50%) of the ownership interest in the company.

1.2. “Agreement” shall mean the CWO, along with this Master Services Agreement (“MSA”) and as applicable the Business Voice Services Schedule, Business Data Services Schedule, Space Lease Agreement, Emergency Services Policy, Numbering Policy, Privacy Policy and Acceptable Use Policy (“AUP”) located on Smart City’s website ([www.smartcitynetworks.com/legal/](http://www.smartcitynetworks.com/legal/)) all of which are made a part hereof and incorporated herein by reference, and which together constitute the Agreement between Customer and Smart City for the Services.

1.3. “CWO” shall mean the signed request(s) for Services submitted by Customer, which are hereby incorporated by reference and made a part hereof.

1.4. “Customer Premises” shall mean the Services Location(s) occupied by Customer or its end users to which Services are delivered as identified in the CWO.

1.5. “Excused Outage” shall mean any outage, unavailability, delay or other degradation of Services related to, associated with or caused by Smart City scheduled maintenance events (to the extent notice is provided in accordance with Section 2.5), Customer actions or inactions, Customer provided power or equipment, any third party, excluding any third party directly involved in the operation and maintenance of the Smart City network but including, without limitation, Customer’s end users, third party network providers, traffic exchange points controlled by third parties, or any power, equipment or services provided by third parties, or an event of force majeure as defined in Section 7.1.

1.6. “Facilities” shall mean any property owned, licensed or leased by Smart City or any of its Affiliates and used to deliver Services, including terminal and other equipment, conduit, fiber optic cable, optronics, wires, lines, ports, routers, switches, channel service units, data service units, cabinets, racks, private rooms and the like.

1.7. “Services” shall mean the Smart City Services identified on the CWO and as applicable, in the Services Schedule.

1.8. “Services Activation Date” shall mean the date that the Services ordered by Customer have been installed by Smart City pursuant to the CWO and have been tested by Smart City and are functioning properly, and when billing commences.

1.9. “Services Term” shall mean the duration of time (measured starting on the Services Activation Date or some other mutually agreed upon date) for which Services are ordered, as specified in the CWO. At the end of the Services Term as set forth herein, the Agreement shall automatically continue thereafter on a month to month basis at the existing Services Term rates set forth in the applicable CWO(s) unless/until either Party provides 30 days prior written notice to the other Party to terminate the Services. However, in the event Customer’s account is more than 30 days past due for any undisputed amounts, this Agreement shall not be extended, and/or the Services revised as the Customer may have requested and Smart City has agreed to provide until such time as all undisputed past due amounts have been paid by Customer in full to Smart City.

#### ARTICLE 2. DELIVERY OF SERVICES

2.1. **Submission of CWO(s)**. To order any Services, Customer will submit a CWO requesting Services. The CWO and its backup detail must include a description of the Services, the non-recurring charges and monthly recurring charges for Services, and the applicable Services Term.

2.2. **Acceptance by Smart City**. Upon receipt of a CWO, if Smart City determines (in its sole discretion) to accept the CWO, Smart City will provide Customer with a tentative Services Activation Date for the requested Services (or some portion of the Services). Notwithstanding anything in the Agreement or any CWO to the contrary, any Customer requested date for delivery of Services will not be effective unless and until confirmed by Smart City. Smart City will become obligated to deliver ordered Services only if Smart City has provided a Services Activation Date for the Services to Customer.

2.3. **Credit Approval and Deposits**. Customer will provide Smart City with credit information as requested, and delivery of Services shall be subject to Smart City credit approval. Smart City may require Customer to make a deposit or deliver another form of security as a condition to Smart City’s acceptance of any CWO, or as a condition to Smart City’s continuation of Services. The deposit will be held by Smart City as security for payment of Customer’s charges.

When Services to Customer are terminated, the amount of the deposit and any accrued interest will be credited to Customer's account and any remaining credit balance will be refunded. Any deposit paid by Customer pursuant to this Section 2.3 will be held by Smart City in accordance with the applicable law governing such deposit.

2.4. **Customer Premises.** Customer shall allow Smart City access to the Customer Premises to the extent reasonably determined by Smart City for the installation, inspection and scheduled or emergency maintenance of Facilities relating to the Services. Smart City shall notify Customer at least two (2) business days in advance of any regularly scheduled maintenance that will require access to the Customer Premises or that may result in a material interruption of Services. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the Facilities on the Customer Premises. In the event Customer fails to do so, Customer shall reimburse Smart City for the actual and reasonable cost of repairing or replacing any Facilities damaged or destroyed as a result of Customer's failure. Customer will provide a safe place to work and both Customer and Smart City will comply with all laws and regulations regarding the working conditions on the Customer Premises. Smart City shall comply with Customer's security and safety requirements for said premises if applicable and provided that Customer has notified Smart City in advance of such requirements.

2.5. **Customer Move.** If for any reason Customer relocates and requires their Services to be moved by Smart City, a Move Fee will be assessed to Customer. This one-time charge Move Fee shall be based on, but limited to, the services being moved and the distance of the move from the original Customer Services Location.

2.6. **Site Survey.** Customer agrees that the following actions will be taken in sequence to conduct a site survey: (i) Customer shall identify a person at the Customer Premises who is authorized to grant Smart City or its designee access for purposes of performing a prospective site survey ("Access Granting Personnel"); (ii) Customer shall inform the Access Granting Personnel that Smart City or its designee will be contacting them directly to coordinate a site survey; (iii) Smart City or its designee shall contact the Access Granting Personnel and coordinate the timing and other details of a prospective site survey with them; (iv) Smart City shall dispatch its designee to the site to conduct the site survey in accordance with the terms coordinated with the Access Granting Personnel; (v) if Smart City determines that the site is serviceable without any Extraordinary Setup Costs (e.g. inside wire drop), then Smart City shall proceed with the installation and activation of Services; (vi) if, however, Smart City determines that Extraordinary Setup Costs are necessary in order to render the site able, then such costs, along with serviceability alternatives if available, will be communicated to Customer. Customer shall at its option and in its sole discretion do one of the following within three (3) business

days of receipt of such communication from Smart City or be deemed to have accepted the Extraordinary Setup Costs: (a) accept responsibility for the Extraordinary Setup Costs and proceed with the Services order; (b) accept a proposed alternative serviceability option from Smart City; or (c) cancel the order without incurring any liability.

2.7. **Inside Wiring.** Customer acknowledges that Smart City may use existing wiring located within the Customer Premises ("Inside Wiring"). Customer represents and warrants that Customer owns or controls the Inside Wiring, and gives Smart City permission to use, alter, and remove equipment from, such wiring. Customer agrees to indemnify Smart City from and against all claims by an owner, landlord, building manager, or other party in connection with installation, maintenance, repair, or provision of the Services.

If Customer does not own the Customer Premises or your unit is part of a multi-tenant environment (e.g., office building, apartment building, condominium, private subdivision), Customer represents and warrants that it has obtained permission from any necessary party, including but not limited to the owner, landlord, or building manager, to allow Smart City and its subcontractors reasonable access to install, maintain, and repair the Services.

Installation and wiring will be provided by Smart City up to the building's Services Delivery Point. Any inside wiring, or special construction required to extend the Services Delivery Point, is the responsibility of the Customer or the Customer's low voltage contractor. In cases where Smart City or its subcontractors provide the inside wiring to extend the Services delivery location; Smart City will own said wiring and will be responsible for repair, maintenance and replacement. All existing Inside Wiring is the property of the Customer or the property of whomever owns the Customer Premises. Placement of Inside Wiring from the building's Services Delivery Point shall be arranged by the Customer prior to the date of Smart City's installation of the Services. Except in cases where Smart City or its contractor provides the inside wire, any costs associated with Inside Wiring, or delays caused thereby, are the responsibility of the Customer. Accordingly, Customer is responsible for the repair, maintenance and replacement (including riser cable) of Customer owned Inside Wiring.

2.8. **Power.** Smart City owned equipment located on the Customer Premises requires electrical power from the Customer Premises to operate, which the Customer is responsible for providing. If there is an Optical Network Terminal ("ONT") located anywhere on the Customer Premises the Customer is responsible for providing an Uninterrupted Power Supply ("UPS").

Smart City equipment located on the Customer Premises will not function in the event of a loss of Customer provided power. This will disrupt Customer's Internet Services, Voice Services as well as any additional services that use the

Smart City connection for transport. Customer understands that 911/E911 may not function if Voice Services are interrupted for any reason, including but not limited to failure of Smart City equipment, a power outage, failure of Smart City's network or Facilities, network congestion, or suspension or disconnection of Customer's Services because of non-payment. Smart City will have no liability for loss of any Services in the event of interruption of Customer provided power.

2.9. **Smart City Facilities.** Except as otherwise agreed, title to all Facilities shall remain with Smart City. Smart City will provide and maintain the Facilities in good working order. Customer shall not and shall use commercially reasonable efforts to not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Facilities, without the prior written consent of Smart City. The Facilities shall not be used for any purpose other than that for which Smart City provides them. Customer shall not take any action that causes the imposition of any lien or encumbrance on the Facilities. In no event will Smart City be liable to Customer or any other person for interruption of Services or for any other loss, cost or damage caused by or related to improper use or maintenance of the Facilities by Customer or any third party gaining access to the Facilities by Customer in violation of the Agreement, and Customer shall reimburse Smart City for any damages incurred as a result thereof. Customer agrees (which agreement shall survive the expiration, termination or cancellation of any CWO) to allow Smart City to remove the Facilities from the Customer Premises:

(A) after termination, expiration or cancellation of the Services Term of any Services in connection with which the Facilities were used; or

(B) for repair, replacement or otherwise as Smart City may determine is necessary or desirable, but Smart City Telecom will use reasonable efforts to minimize disruptions to the Services caused thereby.

2.10. **Customer-Provided Equipment.** The Customer is responsible for any equipment or facilities required to complete the connection between the Services demarcation point and the Customer's LAN. Smart City shall not be responsible for the operation or maintenance of any Customer-provided communication equipment. Smart City undertakes no obligations and accepts no liability for the configuration, management, performance, intended use, compatibility or any other issue relating to Customer-provided Wi-Fi, routers, Local Area Network (LAN) equipment or other Customer-provided voice equipment (i.e. PBX, key system, etc.) used for access to or the exchange of traffic in connection with the Services.

2.11. **Scheduled Maintenance.** Scheduled maintenance of the Smart City network will not normally result in Services interruption or outage. However, in the event scheduled maintenance should require a Services interruption or outage,

Smart City will exercise commercially reasonable efforts to (i) provide Customer with seven (7) days prior notice of such scheduled maintenance, (ii) work with Customer in good faith to attempt to minimize any disruption in Customer's Services that may be caused by such scheduled maintenance, and (iii) to perform such schedule maintenance during the hours of 12:00 a.m. (midnight) until 6:00 a.m. local time. Any scheduled maintenance of the Smart City network that impacts Services shall be considered an Excused Outage.

### **ARTICLE 3. BILLING AND PAYMENT**

3.1. **Commencement of Billing.** Billing shall commence on the applicable Services Activation Date, regardless of whether Customer has procured services from other carriers needed to operate the Services, and regardless of whether Customer is otherwise prepared to accept delivery of ordered Services.

3.2. **Charges.** The CWO will set forth the applicable non-recurring charges and monthly recurring charges for the Services. Unless otherwise expressly specified in the CWO, any non-recurring charges shall be invoiced by Smart City to Customer upon the Services Activation Date. However, in the event such Services require Smart City to install additional infrastructure, cabling, electronics or other materials in the provision of the Services, such CWO may include (as specified therein) non-recurring charges that are payable by Customer in advance of the Services Activation Date, as mutually agreed between the Parties. In the event Customer fails to pay such non-recurring charges within the time period specified in the CWO, Smart City may suspend installation of the Services (without any liability, including but not limited to liability for Services Level credits) until receipt of such non-recurring charges, and thereafter, Smart City may issue a new Services Activation Date. If Customer requests and Smart City approves (in its sole discretion) any changes to the CWO or Services after acceptance by Smart City, including, without limitation, the Customer requested date for delivery of Services or Services Activation Date, additional non-recurring charges and/or monthly recurring charges not otherwise set forth in the CWO may apply.

3.3. **Payment of Invoices.** Invoices are delivered monthly. Smart City bills in advance for Services to be provided during the upcoming month, except for charges that are dependent upon usage of Services, which are billed in arrears. Billing for partial months is prorated based on a calendar month. Payment by Customer on all Smart City invoices are due 15 days after the date of invoice. Unless otherwise specified on the particular invoice, all payments shall be due and payable in U.S. Dollars. Past due amounts bear interest at a rate of 1.5% per month (or the highest rate allowed by law, whichever is less) beginning from the date first due until paid in full. Customer may be required to reimburse Smart City for collection fees, attorney fees, court costs, etc. that Smart City incurs associated with the collection of undisputed and/or unpaid amounts billed to Customer by Smart City. Customer shall not be allowed to renew or make

any changes to the Agreement until all undisputed past due amounts that are outstanding for more than 30 days from due date are paid in full by Customer.

3.4. **Taxes and Fees.** All charges for Services are net of Applicable Taxes (as defined below). Except for taxes based on Smart City's net income, Customer will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Services (collectively "Applicable Taxes"). If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Smart City with a valid exemption certificate (in a form reasonably acceptable to Smart City). Smart City will give effect to any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies to any Services billed by Smart City to Customer only for the period following Smart City's receipt of such exemption certificate.

3.5. **Regulatory and Legal Changes.** In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of Services, Smart City and Customer will negotiate regarding the rates to be charged to Customer to reflect such increase in cost and, in the event that the Parties are unable to reach agreement respecting new rates within 30 days after Smart City's delivery of written notice requesting renegotiation, then (a) Smart City may pass such increased costs through to Customer, and (b) if Smart City elects to pass such increased costs through to Customer, Customer may terminate the affected Services without termination liability by delivering written notice of termination no later than 30 days after the effective date of the rate increase.

3.6. **Disputed Invoices.** If Customer reasonably disputes any portion of a Smart City invoice, Customer must pay the undisputed portion of the invoice and submit written notice of the claim (in a form reasonably requested by Smart City) for the disputed amount. All claims must be submitted to Smart City in writing within 30 days from the date of the invoice for those Services. Customer waives the right to dispute any charges not disputed within such 30-day period. In the event that the dispute is resolved against Customer, Customer shall pay such amounts plus interest at the rate referenced in Section 3.3.

3.7. **Termination Charges.**

(A) Customer may cancel Services following Smart City's acceptance of the applicable CWO and prior to the Services Activation Date upon prior written notice to Smart City. In the event that Customer does so, or in the event that the delivery of such Services is terminated by Smart City as the result of an uncured default by Customer pursuant to Section 4.2 of the Agreement, Customer shall pay Smart City a cancellation charge equal to the sum of:

(i) any third-party cancellation/termination charges related to the installation and/or cancellation of Services;

(ii) the non-recurring charges (including any non-recurring charges that were waived by Smart City at the time of the CWO) for the cancelled Services; and

(iii) one (1) month's monthly recurring charges for the cancelled Services.

Customer's right to cancel any particular Services under this Section 3.7(A) shall automatically expire and shall no longer apply upon Smart City's delivery to Customer of a Services Activation Date for such Services.

(B) In addition to Customer's right of cancellation under Section 3.7(A) above, Customer may terminate Services prior to the end of the Services Term upon 30 days' prior written notice to Smart City. In the event that, after either the original Services Activation Date (if Customer requests and Smart City agrees to a delay in delivery of a particular Service) and prior to the end of the Services Term, Customer terminates Services or in the event that the delivery of Services is terminated by Smart City as the result of an uncured default by Customer pursuant to Section 4.2 of the Agreement, Customer shall pay Smart City a termination charge equal to the sum of:

(i) all unpaid amounts for Services provided through the date of termination;

(ii) any third-party cancellation/termination charges related to the installation and/or termination of Services;

(iii) the non-recurring charges (including any non-recurring charges that were waived by Smart City at the time of the CWO) for the cancelled Services, if not already paid; and

(iv) If Customer terminates the Agreement without cause, then Customer shall be required to pay all accrued but unpaid charges through the date of such early termination and a charge equal to the total number of months remaining in the Services Term or any renewal related thereto multiplied by the monthly recurring charges for the Services as set forth in the CWO (the "Early Termination Fee").

(C) The Parties acknowledge that the cancellation or termination charges set forth in this Section 3.7 are a genuine estimate of the actual damages that Smart City will suffer and are not a penalty.

3.8. **Fraudulent Use of Services.** Customer is responsible for all charges attributable to Customer incurred respecting Services, even if incurred as the result of fraudulent or unauthorized use of Services; except Customer shall not be responsible for fraudulent or unauthorized use by Smart City or its employees.

## **ARTICLE 4. TERM AND TERMINATION**

### **4.1. Term.**

(A) The Agreement shall become effective on the Services Activation Date and shall continue for the period identified in the CWO (“Services Term”), unless earlier terminated as provided herein. At the end of the Services Term as set forth in the CWO, the Services Term shall automatically renew on a month to month basis at the then existing Services Term rates set forth in the applicable CWO(s) unless/until either Party provides 30 days' prior written notice to the other Party to terminate the Services.

(B) Except as otherwise set forth herein, Smart City shall deliver the Services for the entire duration of the Services Term, and Customer shall pay all charges for delivery thereof through the end of the Services Term. To the extent that the Services Term for any Services extends beyond the Agreement Term, then the Agreement shall remain in full force and effect for such Services until the expiration or termination of such Services Term.

(C) In the event that provision of any of the Services provided by Smart City to Customer pursuant to the Agreement, or the Agreement itself, becomes economically unreasonable to Smart City or is otherwise determined by Smart City not to be in Smart City's best interest, Smart City may terminate the Services or the Agreement upon 30 days prior written notice to Customer. Customer shall not be responsible or have any liability hereunder for any remaining Term of Services.

**4.2. Default By Customer.** If (i) Customer makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy or other insolvency protection against Customer is filed and not dismissed within 60 days; (iii) Customer fails to make any payment required hereunder when due, and such failure continues for a period of five (5) business days after written notice from Smart City, (iv) Customer fails to observe and perform any material term of the Agreement (other than payment terms) and such failure continues for a period of 30 days after written notice from Smart City; or (v) Customer's use of Services materially exceeds Customer's credit limit, unless within one (1) business day's written notice thereof by Smart City, Customer provides adequate security for payment for Services; then Smart City may: (A) terminate the Agreement and any CWO, in whole or in part, in which event Smart City shall have no further duties or obligations thereunder, and/or (B) subject to Section 5.1, pursue any remedies Smart City may have under the Agreement, at law or in equity.

**4.3. Default By Smart City.** If (i) Smart City makes a general assignment for the benefit of its creditors, files a

voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy or other insolvency protection against Smart City is filed and not dismissed within 60 days; or (iii) Smart City fails to observe and perform any material term of the Agreement (other than as provided in Section 4.4 and Article 6) and such failure continues for a period of 30 days after written notice from Customer; then Customer may: (A) terminate the Agreement and/or any CWO, in whole or in part, in which event Customer shall have no further duties or obligations thereunder, and/or (B) subject to Section 5.1, pursue any remedies Customer may have under the Agreement, at law or in equity.

### **4.4. Other Rights of Termination.**

(A) If Smart City's installation of Services is delayed for more than 30 business days beyond the established Services Activation Date for reasons other than an Excused Outage, Customer may terminate and discontinue the affected Services upon written notice to Smart City and without payment of any applicable termination charge. This Section 4.4(A) shall not apply to any Services where Smart City (or a third-party contractor engaged by Smart City) is constructing Facilities in or to the Customer Premises necessary for delivery of such Services.

(B) Customer may terminate and discontinue ordered Services prior to the end of the applicable Services Term without payment of any applicable termination charge if for the purpose of converting Customer to similarly priced Services or upgraded Services.

## **ARTICLE 5. LIABILITIES AND INDEMNIFICATION**

**5.1. No Special Damages.** Notwithstanding any other provision hereof (other than Section 5.3), neither Party shall be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including, without limitation, damages for lost profits, lost revenues or the cost of purchasing replacement services) arising out of the performance or failure to perform under the Agreement or any CWO. Nothing in the Agreement shall be construed as limiting the liability of either Party for personal injury or death resulting from the negligence of a Party or its employees.

**5.2. Disclaimer of Warranties.** SMART CITY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

**5.3. Indemnification.** Each Party shall indemnify the other from any claims by third parties and expenses (including legal fees and court costs) respecting damage to tangible property, personal injury or death caused by such Party's

negligence or willful misconduct.

## **ARTICLE 6. SERVICES INTERRUPTIONS**

6.1. **Services Interruptions.** To report issues related to Services performance, Customer may contact the local Smart City representatives utilizing the local published contact information. In order for Smart City to investigate any reported issues, Customer agrees to provide Smart City with supporting information as reasonably requested by Smart City, which may include (as applicable), without limitation, circuit ID, circuit end-point(s), IP address(es), originating phone number and terminating phone number.

6.2. **Services Interruption Credits.** To request a credit for a Services Interruption, Customer must contact Smart City Billing Department or deliver a written request (in a form reasonably requested by Smart City) pursuant to Section 7.4 within 30 days of the end of the month for which a credit is requested. Smart City Billing Department may be contacted by Email at [billing@smartcitynetworks.com](mailto:billing@smartcitynetworks.com). In no event shall the total amount of credits issued to Customer per month exceed the non-recurring charges and monthly recurring charges invoiced to Customer for the affected Services for that month.

## **ARTICLE 7. GENERAL TERMS**

7.1. **Force Majeure.** If the performance of the Agreement, or of any obligation hereunder, is prevented, restricted, or interfered with by reason of any of the following: (a) earthquakes, fire, explosion, breakdown of plant, epidemic, hailstorm, hurricane, lightning, tornado, cyclone, flood, or power failure or restrictions of use or curtailment of service by electric utility; (b) war, revolution, civil commotion, labor disputes, strikes, lockouts, acts of public enemies, blockade, or embargo; or (c) any other circumstances whether similar or dissimilar beyond the reasonable control of the other Party affected; then the Party affected, upon giving prompt written notice to the other Party, shall be excused from such performance and liability on a day-to-day basis to the extent such provision, restriction or interference is continuing (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations relate to the performance so prevented, restricted, or interfered with); provided that such Party so affected shall use its commercially reasonable efforts to provide or remove such causes of non-performance and both Parties shall proceed to perform with dispatch whenever such causes are removed or cease.

7.2. **Assignment and Resale.** Customer may not assign its rights and obligations under the Agreement or any CWO without the express prior written consent of Smart City, which will not be unreasonably withheld by Smart City. The Agreement shall apply to any permitted transferees or assignees. Customer may **NOT** resell the Services to third party end users.

### 7.3. **Affiliates.**

(A) Services may be provided to Customer pursuant to the Agreement by an Affiliate of Smart City. If a CWO requires the delivery of Services in a jurisdiction where, in order for such CWO to be enforceable against the Parties, additional terms must be added, then the Parties shall incorporate such terms into the CWO (preserving, to the fullest extent possible, the terms of the Agreement). Notwithstanding any provision of Services to Customer pursuant to the Agreement by an Affiliate of Smart City, Smart City shall remain responsible to Customer for the delivery and performance of the Services in accordance with the terms and conditions of the Agreement.

(B) Notwithstanding anything in the Agreement to the contrary, Smart City may provide a copy of the Agreement to its Affiliate for purposes of this Section 7.3, without notice to, or consent of, the Customer.

7.4. **Notices.** Notices hereunder shall be in writing and sufficient and received if delivered in person, or when sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided below) or sent by U.S. Postal Service (or other applicable postal delivery service), addressed as follows:

IF TO SMART CITY:

For billing inquiries/disputes, requests for Services Level credits and/or requests for disconnection of Services (for other than default):

Smart City Networks  
5795 W. Badura Ave Suite 110 Las Vegas, Nevada  
89118  
Attn: Billing Department  
Telephone: (702)-943-6000  
Facsimile: (702) 943-6001  
Email: [billing@smartcitynetworks.com](mailto:billing@smartcitynetworks.com)

IF TO CUSTOMER, to the Customer address in the CWO;

or at such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. All such notices shall be deemed to have been given on (i) the date delivered if delivered personally, (ii) the business day after dispatch if sent by overnight courier, (iii) the third business day after posting if sent by U.S. Postal Service (or other applicable postal delivery service), or (iv) the date of transmission if delivered by facsimile or electronic mail (or the business day after transmission if transmitted on a weekend or legal holiday). Notwithstanding the foregoing, any notices delivered by Smart City to Customer in the normal course of provisioning of Services hereunder shall be deemed properly given if delivered via any of the methods described above or via electronic mail to the address listed on any CWO.

7.5. **Contents of Communications.** Smart City shall have no liability or responsibility for the content of any communications transmitted via the Services, and Customer shall defend, indemnify and hold Smart City harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content or for claims by third parties relating to Customer's use of Services. Smart City provides only access to the Internet; Smart City does not operate or control the information, services, opinions or other content of the Internet. Customer agrees that it shall make no claim whatsoever against Smart City relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet.

7.6. **Customer Data.** Customer hereby grants to Smart City a non-exclusive, non-transferable (except in connection with an assignment of the Agreement) license to copy, store, record, transmit, display, view, print, and use Customer Data, solely to the extent necessary to provide the Services to Customer. Except as expressly provided in this Section, Customer grants to Smart City no right, title, interest, or license in the Customer Data, and Customer hereby reserves for itself and its licensors all rights in and to all Customer Data. Notwithstanding the foregoing, Smart City shall be permitted to disclose Customer Data to third parties as and to the extent required by law (including, without limitation, pursuant to a court order or subpoena) or as required to deliver the Services.

7.7. **Data Protection.**

(A) Data Privacy.

Smart City respects Customer's privacy and will only use the information provided by Customer to Smart City or collected in the provision of the Services in accordance with the Privacy Policy available at [www.smartcitynetworks.com/legal/](http://www.smartcitynetworks.com/legal/) which is hereby incorporated by reference. Smart City may update the Privacy Policy from time to time. Please take a look at the "Effective Date" section at the top of the Privacy Policy to see when the Privacy Policy was last revised. Please check the Privacy Policy for the latest version. Your use of the Services following these changes means that you accept the revised Privacy Policy.

(B) Data Security.

Smart City will take commercially reasonable precautions, including, without limitation, technical (e.g. firewalls and data encryption), administrative and physical measures, to help safeguard Customer's Account, Account Data, and Customer Content against unauthorized use, disclosure, or modification.

Customer must protect all End Points using industry-standard security measures. Customer is solely responsible to keep all user identifications and passwords secure. Customer must monitor use of the Services for possible unlawful or fraudulent use. Customer must notify Smart City immediately if Customer becomes aware or has reason to believe that the

Services are being used fraudulently or without authorization by any End User or third party. Failure to notify Smart City may result in the suspension or termination of the Services and additional charges to Customer resulting from such use. Smart City will not be liable for any charges resulting from unauthorized use of Customer's Account.

(C) Software Changes.

Smart City may from time to time push software updates and patches directly to Customer's device(s) for installation and Customer will not prevent Smart City from doing so. Customer must implement promptly all fixes, updates, upgrades and replacements of software and third-party software that may be provided by Smart City. Smart City will not be liable for inoperability of the Services or any other Services failures due to failure of Customer to timely implement the required changes.

7.8. **Electronic Recording.** Customer acknowledges and understands that there are federal and state statutes governing the electronic recording of telephone conversations and that Smart City will not be liable for any illegal use of the Services. Because Customer circumstances vary widely, Customer agrees to carefully review its own circumstances when deciding whether to use the recording features of the Services and it is Customer's responsibility to determine if the electronic recordings are legal under applicable federal and state laws and to provide the proper notifications as required by law. Smart City is not responsible for any misinterpretation, lack of understanding or lack of knowledge regarding the use of electronic recordings or the use of its products by Customer, whether legal or illegal, and Customer will indemnify and hold Smart City and its Affiliates harmless for any claims, damages, fines, or penalties arising out of Customer's failure to adhere to applicable electronic recording laws. Customer agrees that Smart City may, at its sole discretion, record any call between Smart City Metro and Customer for Smart City quality control purposes.

7.9. **Publicity.** Neither Party shall have the right to use the other Party's or its Affiliates' trademarks, service marks or trade names or to otherwise refer to the other Party in any marketing, promotional or advertising materials or activities. Neither Party shall issue any publication nor press release relating to any contractual relationship between Smart City and Customer, except as may be required by law or agreed between the Parties in writing.

7.10. **Confidentiality; Non-Disclosure.** The Parties agree that it may be necessary to exchange certain confidential information during the term of this Agreement. Except as otherwise required by law, the Parties agree not to disclose confidential information to any third party other than to their respective directors, officers, employee and agent and advisors (including legal, financial and accounting advisors) as needed to effectuate this Agreement. This paragraph shall survive any termination of this Agreement.

7.11. **Governing Law.** The Agreement shall be governed

and construed in accordance with the laws of the State of Florida, U.S.A., without regard to its choice of law rules.

7.12. **Amendment**. The Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each Party. Without limiting the generality of the foregoing, any handwritten changes to any portion of the Agreement shall be void unless acknowledged and approved in writing by a duly authorized representative of each Party.

7.13. **Order of Precedence**. In the event of any conflict in the Agreement between the terms and conditions of the MSA, any CWO, and as applicable the Business Voice Services Schedule, the Data Services Schedule or Space Lease Agreement, the order of precedence is as follows: (1) the MSA, (2) the CWO, (3) the applicable Business Voice and/or Data Services Schedule, and (4) the Space Lease Agreement.

7.14. **Survival**. The provisions of this Article 7 and Articles 3, 5 and 6 and any other provisions of the Agreement that by their nature are meant to survive the expiration or termination of the Agreement shall survive the expiration or termination of the Agreement.

7.15. **Relationship of the Parties**. The relationship between Customer and Smart City shall not be that of partners, agents, or joint venturers for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, without limitation, for federal income tax purposes.

7.16. **No Waiver**. No failure by either Party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

7.17. **Severability**. If any provision of the Agreement shall be declared invalid or unenforceable under applicable law, said provision shall be ineffective only to the extent of such declaration and shall not affect the remaining provisions of the Agreement. In the event that a material and fundamental provision of the Agreement is declared invalid or unenforceable under applicable law, the Parties shall negotiate in good faith respecting an amendment hereto that would preserve, to the fullest extent possible, the respective benefits and burdens imposed on each Party under the Agreement as originally executed.

7.18. **Joint Product**. The Parties acknowledge that the Agreement is the joint work product of the Parties. Accordingly, in the event of ambiguities in the Agreement, no inferences shall be drawn against either Party on the basis of authorship of the Agreement.

7.19. **Third Party Beneficiaries**. The Agreement shall be binding upon, inure solely to the benefit of and be enforceable by each Party hereto and their respective successors and assigns hereto, and nothing in the 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 the Agreement.

7.20. **Counterparts**. The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.