

Terms and Conditions

These Terms and Conditions (the “Terms”) are incorporated into, and constitute an essential part of, the Agent Agreement (the “Agreement”) between Agent and CloudWest, LLC (“CloudWest”). Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

1. Duties and Responsibilities of Agent.

1.1 **Engagement.** Agent acknowledges that Agent’s relationship with CloudWest is that of an independent contractor. The appointment of Agent as CloudWest’s independent sales representative shall be non-exclusive, and Agent retains the right to market the products and services of telecommunications service providers either directly or through agents or master agents other than CloudWest. Notwithstanding the foregoing, CloudWest and Agent agree that Agent’s appointment as CloudWest’s sales representative shall be exclusive with respect to any specific opportunity to sell a Service to a customer or prospective customer for which a quote is requested from CloudWest by Agent. Any violation by Agent of the provisions of this Section 1.1 shall constitute an Event of Default. Only an authorized officer of CloudWest shall have the authority and power to enter into an agreement for Services with a customer. Agent acknowledges that Agent is an independent contractor and not an employee, servant, agent, partner, licensee, franchisee or joint ventures of CloudWest. Agent shall set its own daily hours of work and furnish its own place of work and its own tools and equipment. In the event that Agent hires any employees, Agent shall be solely responsible for all insurance related to said employees as well as the payment of all taxes, withholding, FICA or other employment taxes of Agent’s employees. Agent is not entitled to receive any benefits which employees of the CloudWest are entitled to receive. Agent shall not be entitled to workers' compensation, unemployment compensation, disability income, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or Social Security on account of Agent’s work with CloudWest. Agent shall maintain and represent that Agent has coverage for workers' compensation insurance, general liability insurance and motor vehicle insurance.

1.2 **Limited Agency.** Agent is hereby granted a limited agency to act on behalf of CloudWest for the sole purpose of selling Services consistent with the duties described in the Agreement. Only an authorized officer of CloudWest shall have the authority and power to enter into an agreement for Services with a customer.

1.3 **Duties.** Agent shall use his/its best efforts to promote the distribution and sale of Services, which efforts shall include without limitation making initial contact with prospective customers, securing authorized signatures on CloudWest’s authorized forms and securing other necessary data (such as credit information, letter of agency, customer bills, etc.). Agent may only solicit and take orders for the purchase of Services at the prices and on such terms and conditions specified by CloudWest’s Providers (over which Agent acknowledges CloudWest has no control). No quote, estimate, proposal or order given or taken by Agent shall be binding until accepted by the applicable Provider in accordance with the Provider’s policies and procedures. Orders for the Services received by Agent shall be immediately forwarded to CloudWest. Agent shall use forms and documents provided to it by CloudWest

or its Providers for such orders. Agent shall have the forms executed by the customer and shall submit all such order forms to CloudWest immediately following CloudWest's procedures. CloudWest or CloudWest's suppliers shall render all billing directly to the customer. All orders procured by Agent for CloudWest's or its Providers' products and Services shall be subject to the written acceptance and approval of CloudWest or CloudWest's Providers, in their sole discretion, before such orders shall become final. CloudWest reserves the right in its sole discretion to reject, in whole or in part, any quote, estimate, proposal or order given or taken by Agent. Agent shall make no representations, guarantees or warranties with respect to the Services that are inconsistent with the written descriptions, guarantees, warranties and representations provided and issued by the applicable Provider. Agent may **NOT** represent himself/itself as a reseller of the Services that CloudWest is authorized to sell under its agreements with its Providers. Agent shall have no signatory authority to bind CloudWest to any order or agreement.

1.5 Standards of Conduct. In the performance of its duties hereunder, Agent shall be governed in all dealings with members of the public by the professional standards of honesty, integrity, and fair dealing. Furthermore, Agent shall represent CloudWest and its Providers fairly and shall make no representations or guarantees concerning the Services which are false, misleading, or inconsistent with the representations set forth in CloudWest and/or its Providers' promotional materials, literature, manuals, and price lists as are published and supplied from time to time.

1.6 Covenants.

- a. Agent shall use its best efforts to solicit and promote the sale of the Services.
- b. Agent shall use its best efforts to ensure customer satisfaction, including but not limited to assisting CloudWest and each applicable Provider with responding to customer problems in a timely manner.
- c. Agent shall use its best efforts to assist CloudWest in the collection of amounts owed by customers for Services sold on credit.
- d. Agent shall not advertise the Services by mail, electronic mail, classified advertisements, newspaper, television, radio, business shows, Internet, or any other means without the prior express written consent of CloudWest which may be withheld in CloudWest's sole discretion.
- e. Agent shall, at all times, make informed and accurate representations concerning the Services in connection with Agent's solicitation and sales activities. Any misrepresentation, determined in the sole discretion of CloudWest, concerning the Services or CloudWest may be treated by CloudWest as an Event of Default. Agent accepts full and complete responsibility for any such misrepresentation and shall defend, indemnify and hold harmless CloudWest from and against all judgments, liabilities, losses and costs (including, without limitation, reasonable attorneys' fees and expenses) in connection with any such misrepresentation.

- f. Agent shall not alter or amend the Services provided to a customer. If Agent alters or amends the Services provided to a customer, such alteration or amendment shall constitute an Event of Default.
- g. Agent acknowledges and will strictly adhere to Section 6, CloudWest's Customer Proprietary Network Information Policy. Agent acknowledges and will strictly adhere to Section 7, CloudWest's Policies and Procedures Regarding Slamming and Cramming Prevention.
- h. Agent hereby agrees and acknowledges Agent has, or its employees have, a valid driver's license and the necessary driver's insurance as is required by law. Furthermore, Agent agrees and acknowledges that Agent must maintain a valid driver's license and the required driver's insurance for the Term of the Agreement.

1.8 Performance Quotas. CloudWest may in its sole discretion establish and maintain performance requirements, quotas, incentives, areas of responsibility, standards, policies and procedures that Agent must comply with upon CloudWest notifying Agent in writing of same. Failure to so comply shall constitute an Event of Default.

1.8 Pricing; Terms of Service. CloudWest and/or its Providers shall set the prices, terms and conditions of sale of their products and Services. CloudWest or its Providers expressly reserve the right to change the prices, terms and conditions of sale, and/or to expand, reduce or modify the products and Services being offered at any time without prior written notice to Agent. Agent agrees that it will make no warranties or representations about CloudWest or its Providers' products and services other than those specifically authorized by CloudWest and/or CloudWest's suppliers.

1.9 Sub-Agents. Agent may utilize sub-agents to market the Services, provided however that prior to engagement of such sub-agents, Agent shall have received the written approval of CloudWest. Any such sub-agents shall be subject to the terms and conditions of the Agreement.

1.10 Customers. Agent hereby acknowledges and agrees that all customers accepted by CloudWest under the Agreement shall be and shall remain customers of CloudWest for Services and not of Agent. Agent shall not terminate, attempt to terminate, or otherwise interfere in any way with CloudWest's relationship with any such customer without the prior written consent of CloudWest for so long as the Agreement is in effect or for a period of thirty six (36) months following Agent's termination of the Agreement by either party. If Agent violates this prohibition during the term of the Agreement, CloudWest may terminate the Agreement and any obligation of CloudWest to pay commissions to Agent shall immediately and irrevocably terminate. If the Agreement is terminated by CloudWest under the provisions of Section 4.2(i) of the Agreement, customers shall become the customers of Agent and Agent may migrate customers to another provider of services provided they are in accordance with the rules governing customer migration set by the service provider whose products and services the customer purchased while a customer of CloudWest.

1.11 **Commissions.** Agent is responsible for tracking its customer commission receipts for closed sales. In the event commission payments are not paid by CloudWest to Agent due to Agent not having provided proper order information to CloudWest, CloudWest's sole responsibility shall be to retroactively pay Agent for not more than ninety (90) days from the date upon which Agent notified CloudWest that commissions were missing. CloudWest shall thereafter pay Agent on a going forward basis in accordance with **Appendix A** of the Agreement. Agent shall not be entitled to commissions on customer invoices which remain unpaid for greater than ninety (90) days from the date of the invoice. Accordingly, CloudWest shall have the right to deduct or offset from Agent's commission payments on an ongoing basis and to retain such deductions or offsets for CloudWest's own account. Any commission payments previously made to Agent relating to invoices which are not paid by the customer within this stated ninety (90) day period shall be subject to the withholding from other commissions due and owing to Agent of 100% of the amount previously paid to Agent for said sale. The commission percentages set forth in Appendix A are valid only on standard CloudWest authorized products and services. Commissions on non-standard products and services will be determined on a case by case basis.

1.12 **Commission Disputes.** Agent must provide written notice to CloudWest of any dispute with respect to a commission within thirty (30) days of Agent's receipt of such commission; any commission not so disputed shall be deemed accepted by and binding upon Agent.

1.13 **Intellectual Property/Approval of Advertising.** Agent agrees that Providers are the exclusive owner of all trademarks and tradenames relating to the Services. Agent may use such trademarks and tradenames only for the purpose of advertising and promoting the Services consistent with the terms and conditions hereof, and Agent shall acquire no proprietary or other rights with respect to such tradenames, trademarks or other intellectual property. All advertising used by Agent for the Services is subject to CloudWest's prior written approval.

1.14 **Responsibility for Taxes.** Agent shall pay all federal, state and local income taxes attributable to commissions paid by CloudWest hereunder. CloudWest is not responsible for withholding, and shall not withhold, FICA or other employment taxes of any kind from any payments that it owes Agent. CloudWest shall issue Agent a 1099 rather than a W2 form. Agent shall be solely responsible for the payment of all taxes, (including estimated taxes or quarterly taxes) payable with respect to commissions earned by Agent pursuant to this Agreement.

1.15 **Warranties.** Agent shall not make any representations as to Service warranties to any customer or potential customer other than the warranty published by CloudWest or Providers.

1.16 **Compliance With Laws.** Agent shall comply with all applicable laws and regulations, including but not limited to: (i) state laws relating to industrial accidents, worker's compensation, unemployment, FICA and all local, state and federal income taxes; and (ii) all rules and regulations of the Federal Communications Commission relating to Customer

Proprietary Network Information. Breach of this provision shall be considered an Event of Default.

1.17 **Rights and Obligations Upon Termination.** Upon termination of this Agreement for any reason, Agent shall: (a) discontinue immediately the use of any and all of CloudWest's trademarks, trade names, signs, forms of advertising, website, e-mail, and telephone listings as well as any and all materials and products of any kind which are identified or associated with CloudWest; (b) return to CloudWest all lists of customers, customer leads, materials containing trade secrets and all documents relating to the business practices of CloudWest or its carriers or customers or potential customers provided to Agent by CloudWest or CloudWest suppliers; (c) refrain from making any representation or suggestion that Agent is in any way approved, endorsed, licensed, associated, or identified with CloudWest in any manner whatsoever; and (d) refrain from disclosing and/or exhibiting any confidential information, trade secrets, customer lists or customer leads of CloudWest to any individual or entity other than CloudWest and refrain from copying or reproducing any such material.

2. **Additional Duties and Responsibilities of CloudWest.** CloudWest agrees to inform Agent on a timely basis of any changes in specifications, prices, or marketing standards and requirements pertaining to the Services. CloudWest also shall provide Agent with such sales materials, proposals, specification sheets, service applications and other information as Agent may from time to time require.

3. **Non-Solicitation and Confidentiality.**

3.1 **Non-Solicitation Obligations.** Agent agrees that during the Term hereof and for an additional period of time equal to the greater of (i) the length of time Agent is entitled to receive commissions pursuant to the Agreement or (ii) three (3) years following any termination of the Agreement, Agent shall not, directly or indirectly, (a) solicit, induce or attempt to induce any person, business or other entity, which is a customer of CloudWest or has been a customer of CloudWest during the two (2) year period immediately preceding termination of the Agreement to withdraw, curtail or cease doing business with CloudWest; (b) interfere in any way with the relationship between CloudWest and any of its employees by soliciting, inducing or attempting to induce any CloudWest employee of CloudWest to leave CloudWest or to hire any such employee (whether as an employee, consultant, agent or otherwise); or (c) induce or attempt to induce any provider, carrier, supplier, licensee, licensor, franchisee, or other business relation of CloudWest to withdraw, curtail or cease doing business with CloudWest.

3.2 **Confidentiality Obligations of Agent.** Agent acknowledges and agrees that, during his/its association with CloudWest, CloudWest may make available to Agent information that CloudWest considers to be confidential and/or proprietary, including, but not limited to: present and prospective customer data, agreements, technical data, software, plans, sales and training materials, operating procedures, business methods, business forms, marketing plans and data, agreements and policies, information regarding pending projects and proposals, compensation data, and information about business relationships with and/or ownership interests in or affiliations with other entities ("Confidential Information"). Confidential Information also includes any information that CloudWest obtains from its customers or any other person or entity and which CloudWest treats as proprietary or designates as confidential,

whether or not owned or developed by CloudWest. This Confidential Information may be in written or oral form, and may exist in the form of physical items, on computer disks or hard drives, on computer or audio or video tape, and may be typed, computer generated, or mechanically transcribed in some other fashion, or handwritten, or in any other form.

Agent further acknowledges and agrees that Agent may acquire and learn Confidential Information in the course of his association with, and while performing duties for, CloudWest; and that any disclosure, dissemination, or use in competition with CloudWest by Agent of such Confidential Information would cause serious and irreparable harm to CloudWest.

Therefore, Agent agrees that both during the Term of and at all times after the Agreement terminates, regardless of the reason for such termination, Agent will hold all Confidential Information in the strictest confidence and will not divulge, disclose, use, publish, sell or distribute to any person, partnership, association, corporation or entity any Confidential Information, including but not limited to information regarding CloudWest's customers, except as necessary to perform Agent's duties for CloudWest or as described below or otherwise authorized by CloudWest in writing. Agent further agrees to ensure that any Confidential Information Agent receives shall at all times remain solely in the possession of or under the control of Agent.

CloudWest agrees that the foregoing shall not apply to any information that (i) is or becomes (through no improper action or inaction by Agent) generally available to the public, or (ii) was in its possession or known by it without restriction prior to receipt from CloudWest or (iii) was rightfully disclosed to it by a third party without restriction, or (iv) was independently developed without use of any Proprietary Information of CloudWest. Agent may make disclosures required by law or court order provided Agent uses diligent and reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has notified CloudWest so that it may choose to participate in the proceeding.

3.3 Return of CloudWest Property. Upon the termination of the Agreement for any reason, Agent shall immediately turn over to CloudWest all customer lists and information, sales records, documents, machinery, samples and other items and property belonging to CloudWest, and Agent shall certify to CloudWest that Agent has complied with this requirement. Any books, tapes, disks, records, documents, programs, and other materials made or compiled by Agent pursuant to the Agreement or made available to Agent during the course of the Agreement, and any copies thereof, whether or not they contain Confidential Information, are and shall be the property of CloudWest and/or its Providers and shall be returned to CloudWest and/or its Providers immediately upon the termination of the Agreement. Agent will not make or retain copies of any such property or Confidential Information.

3.4 Injunctive Relief. This provision shall apply to the interpretation and enforcement of all of Agent's responsibilities as set forth in the Agreement, including but not limited to Agent's duty of non-solicitation and confidentiality: (i) since other remedies cannot fully compensate CloudWest for a violation of Agent's responsibilities set forth in the Agreement, CloudWest shall be entitled, in addition to any other remedies or relief available to it, to injunctive relief

to prevent a violation or halt a continuing violation of the covenants set forth in the Agreement; and (ii) if CloudWest must commence litigation to enforce its rights under the Agreement, it may also recover its reasonable attorney's fees from Agent in connection with such litigation, provided however that CloudWest shall be entitled to such fees only to the extent that it prevails in any such litigation.

With the exception of the injunctive relief described above in this Section 3.4, any and all disputes between CloudWest and Agent shall be subject to binding arbitration as described in Section 5 below.

3.5 Forfeiture of Commissions in Event of Violation. Agent further agrees that, in the event of a willful violation by Agent of any of the prohibitions set forth in the Agreement, CloudWest may immediately and irrevocably terminate the payment of any and all commissions that may be payable to Agent hereunder, regardless of whether CloudWest seeks or obtains injunctive relief pursuant to Section 3.4, above.

4. Indemnification; Limitation of Liability.

4.1 Agent shall indemnify and hold harmless CloudWest, its officers, employees and customers from and against any and all claims, losses, liabilities, demands, suits, judgments, damages, expenses of any nature, or sums of money awarded to any party and accruing against CloudWest that directly or indirectly arise out of or as a result of any act and/or omission of Agent, its employees, representatives or sub-agents while engaged in, or in connection with, the discharge or performance of the services to be done or performed by Agent hereunder, including but not limited to: (a) a breach of the Agreement by Agent; (b) Agent's taxes, liabilities, costs or expenses of its business; (c) any negligent, reckless or willful act or omission of Agent, its employees, agents, servants, or contractors; or (d) any advertisement or promotional material distributed, broadcast, or in any way disseminated by Agent, or on behalf of Agent, unless such material has been produced or approved in writing by CloudWest. Agent shall also hold CloudWest harmless from any and all claims and/or liens for labor, services or materials furnished to CloudWest in connection with the performance of Agent's obligations under this Agreement.

4.2 Agent understands that Agent's appointment herein may subject to the rules and regulations of the Federal Communications Commission (FCC) and the various regulatory authorities of each state, and Agent hereby agrees to be fully responsible for all of Agent's employees, agents and representatives and to abide by all laws, rules, regulations, administrative decisions and pronouncements of the FCC and all such regulatory authorities.

4.3 Agent understands that it is responsible for any orders submitted to CloudWest, as well as for the correctness of the information that is contained in the orders. Any disputes regarding the validity of an order that results in the imposition of monetary consequences on CloudWest shall be reimbursed to CloudWest by Agent fully and immediately. CloudWest may obtain such reimbursement through a deduction in any Commissions owed by CloudWest to Agent. In the event the amount of the Commissions owed is insufficient to fully reimburse CloudWest pursuant to this paragraph, Agent agrees to fully and immediately pay CloudWest the remainder.

- 4.4 CloudWest will have no liability to Agent for Commissions that might have been earned under this Agreement but for the inability or failure of CloudWest's Providers to provide Services to any person or legal entity solicited by Agent or in the event of discontinuation or modification of such Services.
- 4.5 In connection with the services to rendered under this Agreement, Agent shall not engage in any pyramid scheme or multilevel marketing plan which violates any state or federal laws. Specifically, in connection with the marketing activities to be carried out under this Agreement, Agent shall not engage in any plan or operation wherein a person acquires the opportunity to receive a pecuniary benefit which is based upon the inducement of additional persons by that person, and/or others, regardless of number, to participate in such plan or operation, and is not contingent on the volume of CloudWest's services sold to the public.
- 4.6 Agent agrees not to violate any FCC or state rules. Agent agrees to fully and immediately reimburse CloudWest and the employees, officers, directors, partners, shareholders, successors, assigns and independent contractors of CloudWest, for all claims, damages, liabilities or expense of any description (including but not limited to reasonable attorney's fees and costs) arising out the violation by Agent or any of Agent's employees, agents or representatives of any applicable FCC and/or state rules. Agent further agrees that Agent will not settle without consulting with CloudWest and obtaining CloudWest's prior written consent. Agent must also allow CloudWest to participate in its own defense at Agent's expense.
- 4.7 Agent shall be solely and singularly responsible for payment of any compensation owed to Agent's employees, sub-agents or representatives. Nothing contained herein shall be construed to create any obligation by CloudWest whatsoever to pay compensation of any kind to any of Agent's employees, sub-agents or representatives. Agent warrants and represents that it shall fully and faithfully pay compensation owed to its employees, sub-agents and representatives in accordance with its own internal policies and procedures. Agent shall indemnify and hold harmless CloudWest from and against any and all claims by any of Agent's employees, sub-agents or representatives for payment of such compensation.
- 4.8 NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY STATED OR IMPLIED HEREIN, CLOUDWEST SHALL NOT BE LIABLE TO AGENT WITH RESPECT TO THE AGREEMENT EXCEPT FOR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CLOUDWEST. CLOUDWEST WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE LOSS OF COMMISSIONS THAT MIGHT HAVE BEEN EARNED, THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT. In no event will CloudWest's aggregate liability for damages under this Agreement exceed the greater of the amount of commissions earned by Agent under this Agreement during the three (3) months prior to the date such liability arose or ten thousand dollars (\$10,000). Both Parties acknowledge and agree that the limitations in this section are fair and reasonable.

5. **Binding Arbitration.**

- 5.1 **Conduct of Arbitration.** Any dispute not settled through mediation will be settled by binding expedited arbitration in accordance with the commercial Arbitration Rules of the American

Arbitration Association (the “AAA Arbitration Rules”) in effect from time to time. Where no remedy for a particular breach is specified in the Agreement, the arbitrator, subject to any limitations set forth in the applicable agreement, will have the power to fashion an appropriate remedy consistent with the spirit and intent of the Agreement. Any disputing party may serve the other disputing party or parties with a written demand to commence binding arbitration (“Arbitration Demand”). The arbitrator will be selected by mutual agreement of the disputing parties. If the disputing parties are unable to agree upon an arbitrator within twenty (20) days after the date on which the Arbitration Demand is served, then the Arbitrator will be selected in accordance with the AAA Arbitration Rules.

5.2 Place; Effect of Arbitration. The arbitration will be held in Arizona and shall be governed by the laws of the State of Arizona, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The disputing parties will cooperate fully to ensure the entry of the arbitrator’s award by a court of competent jurisdiction. Once the arbitrator’s award has been entered by a court of competent jurisdiction, the arbitrator’s award will have res judicata and collateral estoppel effect, and the disputing parties will not seek or assert the right in any manner whatsoever to challenge the validity of the arbitration or relitigate issues adjudicated by the arbitrator.

5.3 Length of Arbitration. The parties agree to use all reasonable efforts to complete any such arbitration within twelve (12) months from the date it is first commenced.

6. CloudWest’s Customer Proprietary Network Information Policy.

CloudWest protects customer privacy and follows a zero-tolerance policy regarding the improper use of a customer’s proprietary network information ("CPNI) as defined by law and FCC rules, discussed below. Any employee who accesses or uses CPNI to sell or market services in a manner contrary to law or regulatory requirements is subject to disciplinary action up to and including termination. CloudWest’s policy also prohibits its Agents from unauthorized use of CPNI.

Title 47 of the United States Code, Section 222(c)(1) provides:

Privacy Requirements for Telecommunications Carriers. Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

Agent understands that, in implementing this provision, the FCC promulgated a series of rules that generally precludes the use of a customer’s CPNI derived from the provision of service in

one category of service (such as local exchange service) in upselling or marketing to that customer a service from a different service category (such as internet access or security services).

By signing the Agreement, Agent agrees that Agent has read and understands CloudWest's policy outlined above, and hereby agrees to strictly abide by CloudWest's zero-tolerance policy prohibiting the improper use of CPNI.

7. CloudWest's Policies and Procedures Regarding Slamming and Cramming Prevention. Agent specifically acknowledges, agrees, represents and warrants that Agent will not engage in the practice known as "**SLAMMING**" (the changing of a customer's underlying telecommunications provider without the written consent of such customer) or "**CRAMMING**" (the addition of unauthorized charges to a customer's telecommunications bill). If Agent engages in slamming or cramming, CloudWest may (i) terminate the Agreement, (ii) Agent shall become liable for any and all costs associated with the act(s) of slamming and cramming (including but not limited to any fines levied by any regulatory agency), and (iii) any obligation of CloudWest to pay commissions to Agent shall immediately and irrevocably terminate. All Agents and their distributors selling long distance or local services on behalf of CloudWest **MUST** carefully read the contents of this Section 7 outlining CloudWest's policies and procedures regarding slamming and cramming prevention. This Section 7 explains CloudWest's policies and procedures for the sale of long distance and local services. The purpose of this section is to explain what can cause the unauthorized switching of a customer, the addition of unauthorized charges, the importance of preventing such switching and unauthorized additions, and the seriousness of the matter to CloudWest and its Providers.

7.1 Common Causes of Slamming and Cramming.

- a. Incorrect telephone number on submitted application/letter of agency ("LOA") - means that an incorrect telephone number is switched without customer's written consent. Furthermore, the customer who did want a CloudWest-provided long distance or local service did not get switched to the service they requested.
- b. The submitted application/LOA is illegible and directly causes the person that keys the order into the system to enter the wrong name and/or phone number.
- c. The person who "authorized" switching Providers or adding additional charges really didn't have the authority to make the switch or addition.
- d. A simple misunderstanding when one Agent doesn't tell the other Agent or account payable personnel about selecting a new Provider. Please ask your customers to inform the appropriate persons within the company about the changing of Provider.
- e. Signing a company up just to "get the sale" or reach a qualification or commission level.

- f. Signing a company up, without the customer's knowledge, as a result of spending a lot of time with a company decision maker and assuming that the person would be satisfied with a CloudWest-provided service.

7.2 Effects of Slamming and Cramming.

- a. It is illegal and will not be tolerated CloudWest.
- b. Creates a bad image and adversely affects CloudWest's and its Providers' reputation.
- c. Takes time to investigate and correct.
- d. If we can get information verified, it will save on:
 - i. Order rejects;
 - ii. Returned Mail; and
 - iii. Time to process valid and accurate orders.
- e. Frustrating experience for the company that was slammed.
- f. Usually, in the case of a long distance slam, the local phone company levies a charge to make the initial switch to a CloudWest Provider and then charges to switch the affected customer back to the original long distance company. CloudWest, and then the appropriate sales Agent, are billed for these costs. This leads to serious consequences for the Agent, including termination of the sales agent relationship with CloudWest.

7.3 CLOUDWEST AND ITS PROVIDERS, AS WELL AS FEDERAL, STATE AND LOCAL REGULATORY AGENCIES VIEW "SLAMMING" AND "CRAMMING" AS A VERY SERIOUS PROBLEM. THE FCC CAN IMPOSE SIGNIFICANT FINES ON A PER VIOLATION BASIS.

7.4 How An Agent Can Protect Against Slamming and Cramming.

- a. Agent is strongly encouraged to verify information against each new customer's actual telephone bill for each LOA.
- b. The person signing the LOA should be a person with authority to act on behalf of the company. It is essential that the person signing the LOA have authority to change long distance carriers. The receptionists, secretaries and assistants typically do not have the authority to change long distance carriers for the company. If the person signing the LOA is different from the person with actual authority to do so, Agent should attempt to contact the other person. While this policy might be viewed as jeopardizing some sales orders, it should give Agent a chance to retain sales by demonstrating Agent's concern and professionalism.

- c. Review the LOA for accuracy and legibility, especially the telephone numbers.
- d. Never sign someone else's name on the LOA or other document.
- e. Don't force a sale that is not there.

8. Miscellaneous.

8.1 Notices. All notices, demands, consents, requests, and approvals given by Agent must be in writing and will be effective when sent, if hand delivered or faxed (with confirmation of receipt); on the next business day if sent by a generally recognized overnight delivery service (subject to confirmation from the service); or on the date received if sent by United States certified or registered mail, return receipt requested.

8.2 No Waiver. The failure of a party to the Agreement to insist upon strict adherence to any of the terms of the Agreement on any occasion will not be considered a waiver, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement. Any waiver must be in writing.

8.3 Governing Law. The Agreement, its application and interpretation shall be governed and construed exclusively by its terms and in accordance with the laws of the State of Arizona. All Parties to this Agreement agree to abide by the laws of the United States and the State of Arizona. Any dispute that arises hereunder shall be resolved exclusively in the courts of Maricopa County, State of Arizona, the Parties hereby waiving any claim or defense that such forum is not convenient or proper or that said courts do not have personal or subject matter jurisdiction.

8.4 Binding Effect. The Agreement will inure to be the benefit of and will be binding upon the parties their respective successors, permitted transferees and assigns.

8.5 Assignment and Benefits of Agreement. The rights and obligations of CloudWest under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of CloudWest. The rights and obligations of Agent under this Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of Agent, except that Agent acknowledges that the services to be rendered by Agent are unique and personal. Accordingly, Agent may not assign any of its rights under this Agreement nor delegate any of its duties or obligations under this Agreement without the prior written consent of CloudWest, which shall not be unreasonably withheld.

8.6 Independent Contractor. Each of CloudWest and Agent certifies that neither party has any authority to act for or bind the other party except as expressly provided for in the Agreement. Agent hereby acknowledges that Agent is an independent contractor pursuant to the laws of the State of Arizona and is not an employee of CloudWest. Nothing herein (including but not limited to use of the capitalized term "Agent") shall be construed to create any relationship between CloudWest and Agent in the nature of profit-sharing, partnership, joint venture, employment or any other relationship that might impose liability upon CloudWest for: (a)

Agent's past, present or future debts, liabilities, obligations, acts or omissions; or (b) unemployment, workers compensation or any other employment-related benefits.

8.7 Survival. Any obligations of the parties relating to monies owed, as well as any provisions of this Agreement relating to confidentiality, intellectual property, indemnification, limitation of liability, non-solicitation, interference with CloudWest's relationship with its customers, partners, Providers, carriers, supplier or vendors and commencement of legal proceedings shall survive any termination of this Agreement.

8.8 Severability. To the extent that any provision of the Agreement or the application thereof is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement, or the application of such a provision under other circumstances, will be unaffected and will continue in full force and effect unless the invalid or unenforceable provision is of such essential importance for the Agreement that it is to be reasonably assumed that the parties would not have concluded the Agreement without the invalid or unenforceable provision.

8.9 Solicitation of Services. CloudWest reserves the right to offer all Services provided by CloudWest to the customers introduced by Agent pursuant to the Agreement.

8.10 Force Majeure. CloudWest shall not be responsible or liable for failure to perform its obligations hereunder attributable to any cause or contingency beyond its reasonable control including, without limitation, acts of God; act or omission of civil or military authority; fire; flood, epidemic, earthquake, terrorism, labor dispute (e.g., lockout, strike, work stoppage or slowdown); Provider problems or policies, war, riot, unusually severe weather, accidents, compliance with any regulation or directive of any national, state or local government or any agency or department thereof; or any other cause which by the exercise of reasonable diligence CloudWest is unable to overcome.

8.11 Attorneys Fees and Costs. In the event CloudWest seeks to enforce any of the terms or conditions of the Agreement or protect any of its rights or privileges hereunder, either informally or through formal legal action, Agent shall be liable for all costs incurred by CloudWest as a result thereof, including but not limited to reasonable attorney's fees and court costs (if applicable).

8.12 Headings. All Section headings and captions used in the Agreement and its Terms are purely for convenience and shall not affect the interpretation of the Agreement.

8.13 Construction. Each of the Parties hereto, being sophisticated Parties and having had the opportunity to review and negotiate the terms of the Agreement, the language of the agreement shall not be interpreted against the drafter hereof.

8.14 Survival of Provisions. Any obligations of the Parties that by their nature and import are intended to survive the termination or expiration of the Agreement, including without limitation those relating to confidentiality, limitations on liability, indemnification, governing law and venue, shall survive termination of the Agreement.

8.15 **Legal Document.** Agent acknowledges that this document has legal consequences and it is important to seek separate legal advice and representation in this matter prior to signing this Agreement.