

# Terms of Service

## Terms of Service

**LAST UPDATED: JULY 2020 – ADDED SECTION 4.6 INTERNET SERVICES**

**PLEASE READ THE FOLLOWING TERMS OF SERVICE CAREFULLY BEFORE USING WWW.HTD.NET OR ANY HTDNET-OWNED OR MANAGED WEBSITE, INCLUDING, BUT NOT LIMITED TO BILLING.HTDNET.COM, CONTROLPANEL.HTDNET.COM:8443, AND PHONE.HTD.NET (“THE SITE”) OR SIGNING UP FOR ANY SERVICE THAT HTDNET OFFERS.**

## 1. INTRODUCTION

HTDNET, LLC, its affiliates and their successors and assigns (collectively referred to as “HTDNET”) makes available the services described in HTDNET’s published service descriptions (“the Services”) subject to these Terms of Service (the “TOS”). Any third-party (non-HTDNET) services or products made available to you by HTDNET may be subject to separate terms of service (including but not limited to acceptable use and privacy policies). You hereby agree to review and abide by any such applicable third-party terms, including but not limited to End User License Agreements applicable to third-party software and/or equipment. These terms are available on request from HTDNET.

For the purposes of the TOS, the word “you” means the individual requesting one or more services provided by HTDNET, and, if applicable, includes any other legal entity on behalf of which an individual makes such a request, including its affiliates, directors, officers, employees, and agents. Additionally, you agree not to make such a request on behalf of any other legal entity unless you have the authority to bind that legal entity to the TOS.

## 2. ACCEPTANCE OF TERMS

2.1. Capacity. You represent and warrant to HTDNET that you have the capacity to enter into a legal agreement in the province, state, territory or country in which you reside. By purchasing the Services, you agree that you are over the age of eighteen, authorized to use the Services, and are responsible for paying for the Services per these TOS.

2.2. PLEASE READ THE TOS CAREFULLY. BY CLICKING ON THE “I AGREE” BUTTON ON THE ORDER FORM OR SIGNING THESE TOS OR A SEPARATE AGREEMENT FOR ANY SERVICE PROVIDED BY HTDNET, YOU ARE AGREEING TO BE BOUND BY THE TOS AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THE TOS (COLLECTIVELY THE “TOS” OR “THE AGREEMENT”). YOUR USE OF THE SERVICES FURTHER CONFIRMS YOUR ACCEPTANCE OF THESE TOS.

2.3. You represent and warrant to HTDNET that your use of any Service that it provides will not violate any applicable law or regulation in the province, state, territory or country in which you use the Services. If you are unable or unwilling to do so, do not request Services from HTDNET.

## 3. YOU

3.1. Services. The Services that you request from HTDNET by means of the online order form at <http://www.htd.net> (“the Site”) or otherwise in writing and which HTDNET agrees to provide subject to these TOS are the “Services”.

3.2. Your Information. You represent and warrant that any information you provide is true, and you will maintain and promptly update such information to keep it true and current.

3.3. Privacy. You have read HTDNET’s Privacy Policy and consent to the use of your personal information as described therein. See <https://www.htd.net/privacy/> to view a copy of the Privacy Policy.

3.4. Communications. HTDNET reserves the right to communicate with you regarding the Services and your use of the Site. You consent to HTDNET's use of any contact information that you provide to HTDNET in doing so.

3.5. Passwords. If you are given a username and/or a password for the purpose of accessing certain features of the Services or certain features of the Site, you are responsible for all activities conducted under that username or password, and you will take all necessary steps to ensure that no one other than you uses that username or password and that password is kept confidential. If you have any reason to believe that any password assigned to you has become known to or been used by any other person, you will inform HTDNET immediately.

3.6. Changing Passwords. HTDNET may, at any time, change any username or password assigned by HTDNET to you, and HTDNET will notify you when it does so.

3.7. Insurance. You shall maintain, at your sole cost, insurance against risks of unauthorized access to or abuse of your accounts and in such amounts that could reasonably be expected by persons acting prudently and engaged in similar activities.

3.8. Your Account. If you need to make any changes to your Services or your Account, you must do so in writing. All requests must be made via your online portal or by contacting HTDNET by postal mail, or e-mail: [itsupport@htd.net](mailto:itsupport@htd.net) or [voip@htd.net](mailto:voip@htd.net).

## **4. DESCRIPTION OF SERVICES**

### 4.1. General.

4.1.1. Description. For each Service package that HTDNET makes available to its customers, HTDNET has prepared and published a specification (each a "Service Description"). The Service Descriptions are available on the Site.

4.1.2. Changes to Services. HTDNET may modify its Services and the corresponding Service Descriptions from time to time. When HTDNET materially changes any Service, HTDNET will: (i) post the updated version of the Service Description on the Site together with the date on which it was revised; and/or (ii) on the home page for the Site for at least 30 days following any such material change to the Service Description, post a notice that the Service Description(s) have been updated. HTDNET may instead, at its own discretion send an email notice of the change(s) to its affected customers.

### 4.2. Hosting Services.

4.2.1. Any Service identified as a "Hosting Service" in its Service Description is a Hosting Service.

4.2.2. Hosting Environment. HTDNET shall: (i) maintain and operate the hardware used to host your website(s) (including monitoring the servers used on a 24/7 basis); and (ii) use commercially reasonable efforts to maintain reasonable temperature and humidity levels, fire suppression controls, power conditioning equipment and uninterruptible power supplies for the proper ongoing operation of HTDNET's hosting hardware.

4.2.3. Disk Space. HTDNET shall provide disk space for your website(s).

4.2.4. Internet. HTDNET shall provide an Internet connection linking your hosted website(s) to the Internet.

4.2.5. Remote Access. You will be given remote and/or web portal access to upload files for your hosted website(s) provided that you do so in a manner consistent with the TOS.

4.2.6. Routing. When HTDNET hosts a website on your behalf, HTDNET will route one or more domain names to that website. The exact number of domain names that HTDNET will route on your behalf will depend on the Hosting Service to which you subscribe. Check the applicable Service Description for more information.

4.2.7. Back-up. You acknowledge that unless you subscribe to a Hosting Service that expressly includes the independent backup of Your Content (as defined below), HTDNET's back-up activities are primarily for HTDNET's own disaster recovery purposes, and that **YOU ARE RESPONSIBLE FOR THE STORAGE, BACK-UP AND ARCHIVING OF YOUR CONTENT**. Also note, Hosting Services include access to one or more tools via your Control Panel that allow you to back-up Your Content. Please use these tools and back-up Your Content frequently. HTDNET disclaims any responsibility for loss of Your Content for any reason through the use of the Services.

4.2.8. Availability. A Hosting Service is "Available" if the: (a) the hardware being used to provide it is operating; and (b) the Internet connection provided as part of the Hosting Service is operational.

4.2.9. Measure. HTDNET will use reasonable efforts to ensure that the Hosting Services will be Available other than for "Scheduled Maintenance" at least 99% of the time, measured monthly. Any maintenance or other work performed on HTDNET's technology infrastructure that takes place with at least 48 hours' prior notice posted to the Site is "Scheduled Maintenance".

4.2.10. Cooperation. You acknowledge that it is important to coordinate your maintenance activities with HTDNET, and you will not conduct any maintenance activities on Your Content during any Scheduled Maintenance time without first obtaining written approval from HTDNET. Changes done during any Scheduled Maintenance time are done at your own risk.

4.2.11. Free Domain Name. If the cost of registering or renewing a single domain name for one year is included in the annual Fees that you are being charged for a Hosting Service (see the applicable Service Description to find out if it is included and the eligible types of domain names) and the domain name that you wish to register or renew for use with the website being hosted is both an eligible type of domain name and available, HTDNET will register or renew (as applicable) the domain name for you. If HTDNET does so and you continue to subscribe to such Hosting Services for a period of at least 12 months, HTDNET will not charge you its then current fee for registering or renewing a domain name (as applicable). HOWEVER, IF THE HOSTING SERVICES ARE TERMINATED LESS THAN 12 MONTHS AFTER REGISTERING OR RENEWING THE DOMAIN NAME (THIS INCLUDES DURING THE FIRST 30 DAYS) OR YOU ATTEMPT TO TRANSFER THE DOMAIN NAME DURING THAT 12 MONTH PERIOD, HTDNET WILL CHARGE YOU AND YOU ARE REQUIRED TO PAY HTDNET'S THEN CURRENT FEE FOR REGISTERING OR RENEWING A DOMAIN NAME (AS APPLICABLE).

4.3. 30 Day Guarantee of Hosting Services. If at any time during the 30-day period beginning on the date that you purchase Hosting Services for the first of your websites to be hosted by HTDNET you are not satisfied with the Hosting Services that you are receiving, you may terminate this Agreement by using the web-based tool that HTDNET provides to you to manage your account to terminate the Hosting Service. If you do so, you will receive a refund. THE REFUND WILL BE CALCULATED BY SUBTRACTING THE FOLLOWING AMOUNTS FROM ANY FEES PAID BY YOU FOR THE HOSTING SERVICES PURCHASED IN RELATION TO YOUR FIRST WEBSITE TO BE HOSTED BY HTDNET:

- ALL ONE-TIME FEES SET OUT ON THE ONLINE ORDER FORM THAT YOU COMPLETED;
- ALL FEES RELATED TO THIRD-PARTY SERVICES EITHER IDENTIFIED AS SUCH OR OPTIONALLY ADDED TO YOUR ORDER WHILE IN THE ONLINE ORDER FORM. THIS INCLUDES BUT IS NOT LIMITED TO PRODUCTS AND SERVICES SUCH AS, GOOGLE APPS, AND SSL CERTIFICATES;
- ALL FEES AND RELATED DISBURSEMENTS FOR DOMAIN NAME REGISTRATION SERVICES (INCLUDING FEES FOR RELATED PRIVACY SERVICES); AND
- ANY ADDITIONAL FEES THAT APPLY TO THE TRANSFER OF ANY RELATED DOMAIN NAME.

#### 4.4. Domain Name Registration Services.

4.4.1. Assistance with Registering Only. HTDNET may assist you to register one or more top-level or second-level domain names (the "Domain Name Registration Service"). For each such domain name registered, HTDNET's involvement ends with the registration. You will be the registrant, administrative contact and technical contact, and you agree to be bound by all applicable terms and conditions published by the applicable registrar, which shall be identified in an email to your email address of record when you register for a domain name through HTDNET. Please note: you are also bound by ICANN's rights and responsibilities, available at <https://www.icann.org/resources/pages/registrars/registrars-en>

4.4.2. Maintenance of Domain Names. You are responsible for the ongoing maintenance, control and use of any domain name registered in your name, on your behalf, or on behalf of any legal entity you represent, and for any fees or taxes associated with its maintenance. To maintain your domain name registration, you will need to interact directly with the applicable registrar. FOR GREATER CLARITY, YOU ARE RESPONSIBLE FOR: (i) RENEWING THE REGISTRATION AND ENSURING THAT IT DOES NOT LAPSE; AND (ii) ADDRESSING ANY ISSUES RELATING TO YOUR DOMAIN NAME. HTDNET IS NOT RESPONSIBLE FOR DOING SO. IF YOU FAIL TO RENEW YOUR DOMAIN NAME REGISTRATION BEFORE THE EXPIRATION DATE, YOU WILL NO LONGER HAVE USE OF THAT NAME. ANY SUCH NON-RENEWED DOMAIN NAME OFFERED BY HTDNET WILL BECOME THE PROPERTY OF HTDNET AT THE TIME OF EXPIRATION, AND HTDNET MAY USE, SELL OR DISPOSE OF SUCH DOMAIN NAMES IN ITS SOLE DISCRETION.

4.4.3. Please note that: (i) HTDNET is not able to guarantee that a proposed domain name is available for registration or that a registrar will register it; (ii) HTDNET will not assist with the registration on your behalf of a proposed domain name in any top-level or second-level domain unless expressly directed by you to do so in writing; and (iii) HTDNET may but is not obligated to inform you of any proposed or new top-level or second-level domains.

4.4.4. Privacy Registration Service. Some registrars allow domain names to be registered without publishing the registrant's name and contact information; others do not. If you wish to take advantage of any such privacy service for a domain name and you are using the Domain Name Registration Service to register the domain name, you are responsible for informing HTDNET in writing prior to the registration of the domain name that you wish to take advantage of the registrar's privacy service. You acknowledge that the privacy service is provided by the applicable registrar, not HTDNET.

4.4.5. As is. Assistance with registering domain names and securing related privacy services is provided "as is" and without any warranties, representations or conditions whatsoever.

4.4.6. Domain Redemption Fee: If your domain name was registered with HTDNET and has expired, but you wish to recover the domain, HTDNET may be able to recover the domain name if it is still within the redemption period. To recover a domain name that has expired but which is still within the redemption period, HTDNET must pay a redemption fee, which in turn will be passed on to you. Please note that this domain redemption fee does not include the registration price of the domain that will still need to be paid to register the domain for the next year. If the domain name is not renewed or acquired during the redemption period, it will be made available again to the general public after the redemption period completes. Only domains that have been registered with HTDNET can be re-registered after expiration of the domain. If the domain that has expired was registered at another company, you will need to contact that registrar to recover the domain from the redemption period.

#### 4.5. VoIP

4.5.1. Any Service identified as a "VoIP" or "Voice over Internet Protocol" Service in its Service Description is a VoIP Service. The terms of this section apply exclusively to HTDNET's VoIP Services.

4.5.2. DID Numbers. When supply is sufficient, HTDNET may make available to you a list of DID/ telephone numbers from which you may choose. You will not be the owner of any DID/ telephone number (including fax numbers) assigned to you by HTDNET, and you will not transfer or attempt to transfer its number(s) to anyone else (except as provided below with respect to Porting Out). HTDNET reserves the right to change, cancel, withdraw, or move such numbers at its sole discretion immediately upon notice. You will surrender all rights to the DID/ telephone numbers and fax numbers upon termination of your Service if they have not been ported out in accordance with this Agreement prior to such termination, and the numbers assigned to you may be reassigned upon termination of your Service. HTDNET will not be liable for any direct or indirect damages or incidental costs arising out of such reassignment.

#### 4.5.3. Local Number Portability.

4.5.3.1. Porting In. You may elect to port an existing DID/ telephone number to HTDNET ("Port-In") for use with the Service. In the event you elect to Port-In a number, you must first select a temporary number from the list of DID/ telephone numbers HTDNET presents to you at the time you order the Service, which will be used until the Port-In is complete. HTDNET will support all valid requests and will cooperate with you to perform any Port-In in accordance with your reasonable directions and HTDNET's operating procedures. Neither HTDNET nor its providers are responsible for any delay, rejection, or false processing of Port-In requests to the extent such delay, rejection, or false processing is attributable to you, your prior provider, or any third parties. HTDNET is not responsible, and you shall be solely liable for any costs billed by your current provider or any other third party relative to a Port-In request, including, but not limited to costs related to early termination of service.

4.5.3.2. Porting Out. You or a third-party provider acting as an agent on behalf of you ("Requesting Party") may request that HTDNET port a number assigned to you by HTDNET to a third-party provider ("Port-Out"). HTDNET will support all such requests and will promptly cooperate with the Requesting Party to perform any Port-Out in accordance with the Requesting Party's reasonable directions and HTDNET's standard operating procedures. In the event of any Port-Out, you agree that until such time as the Port-Out is complete and you terminate the Service for such DID/ telephone number, you shall remain bound by the terms of this Agreement related to that DID/ telephone number. Once the Port-Out is complete, you must terminate the Services associated with such ported DID/ telephone number in order to stop incurring charges for such DID/ telephone number. You recognize and agree that in the event of a Port-Out you shall remain responsible for paying the required monthly service fees in accordance with the TOS, including but not limited to any fees associated with early termination of Service.

4.5.4. Dialing. The Service allows dialing 711 to reach Telecommunications Relay Services (TRS). In the event the user's registered location is not the same as the user's geographic location, 711 calls may not be routed to the correct TRS center for the user's location.

4.5.5. Service Exclusions. The Service may not support directory listings, operator and directory assistance, 976 or 900 calls, 311, 411, 511, or other X11 calling (other than 911 and 711 as detailed in this Agreement) in all or certain service areas.

4.5.6. Customer Proprietary Network Information. In the normal course of providing Services to its users and customers, HTDNET collects and maintains certain customer proprietary network information ("CPNI") typical to the industry. CPNI includes the types of communications services you currently purchase or subscribe to, how you use those Services (for example, your calling records), and billing information related to those Services. Your HTDNET telephone number, name, and address do not constitute CPNI. HTDNET does not sell, trade, or otherwise share your CPNI with anyone outside of HTDNET and those parties authorized to represent HTDNET to offer HTDNET's Services or to perform functions on HTDNET's behalf related to HTDNET's Services, except as the law may require or you may authorize. Federal law generally permits HTDNET to use CPNI in its provisioning of the communications services you purchase or subscribe to,

including billing and collections for those services. HTDNET may also use or disclose your CPNI for legal or regulatory reasons such as to respond to a law enforcement request or court order, to investigate fraud, to protect HTDNET's rights or property, to protect against the unlawful use of HTDNET services, or to protect other users. You may elect to prohibit HTDNET's use of your CPNI to market Services other than Services of the same type that you already purchase from HTDNET by providing HTDNET with your "opt-out" notice within thirty (30) calendar days of your Service commencement by providing HTDNET with written notice of your desire to opt-out. If you fail to do so within such timeframe, you will be deemed to have given HTDNET consent to use your CPNI to market services other than Services of the same type that you already purchase from HTDNET. Restricting HTDNET's use of your CPNI will not affect HTDNET's provision of any Service, nor will it necessarily eliminate all types of HTDNET marketing. When you subscribe to VoIP Services, HTDNET will provide you with a Personal Identification Number (PIN) to access your account. It is your responsibility to safeguard that PIN from unauthorized use. If you lose your PIN or if you suspect unauthorized access to your account, contact voip@htd.net.

4.5.7. System Requirements. In order to use the VoIP Services, you must, at your own expense, provide and utilize one or more industry standard, VoIP-compatible devices, high speed broadband access, and certain software, and may be required to obtain updates or upgrades to the foregoing from time to time. Your ability to use the VoIP Services may be affected by the performance of these items. You acknowledge and agree that system requirements for the VoIP Services may change from time to time and that adherence to the system requirements is your responsibility. You are responsible for ensuring that your networks and systems are adequately secured against unauthorized intrusion or attack and for regularly backing up its data and files in accordance with good computing practices.

#### 4.5.8. 911/E911.

4.5.8.1. Non-Availability of Traditional 911 or E911 Dialing Service. The Service does not support traditional 911 or E911 access to emergency services in all locations. Where we do not offer traditional 911 or E911 access, we offer a feature known as "911 Dialing" which is a limited emergency calling service available only on HTDNET certified devices or Equipment. The 911 Dialing feature may not work at all when used in conjunction with a SoftPhone, Virtual Numbers or Customer-provided Customer Premise Equipment. Our 911 Dialing feature is not automatic; you must separately take affirmative steps, as described in this Agreement and on our website, to register the address where you will use the Services in order to activate the 911 Dialing feature. You must do this for each HTDNET phone number that you obtain. The 911 Dialing feature of the Service is different in a number of important ways from traditional 911 or E911 service as described on our website page for 911 Dialing under "Features," and below. You shall inform any potential users who may be present at the physical location where you utilize the Service of (i) the non-availability of traditional 911 or E911, and (ii) the important differences in and limitations of the HTDNET 911 Dialing feature as compared with traditional 911 or E911 dialing, and (iii) YOU REPRESENT AND WARRANT THAT YOU HAVE BEEN INFORMED BY HTDNET OF THE REASONS TO HAVE AT LEAST ONE BACKUP METHOD OF ACCESSING 911/E911 SERVICE, SUCH AS A CIRCUIT-SWITCHED TDM TELEPHONE OR CELLULAR TELEPHONE, PER CUSTOMER LOCATION. The documentation that accompanies each device that you purchase or lease from HTDNET should include a WARNING LABEL/sticker concerning the potential non-availability of traditional 911 or E911 dialing (the "911 Sticker"). It is your responsibility, in accordance with the instructions that accompany each device, to place the 911 Sticker on each device that you use with the Service. If you did not receive a 911 Sticker with your device, or you require additional 911 Stickers, please contact Customer Support at voip@htd.net.

4.5.8.2. REQUIREMENT TO REGISTER AND UPDATE LOCATION INFORMATION. YOU ARE REQUIRED TO REGISTER YOUR PHYSICAL LOCATION WITH HTDNET UPON ORDERING THE SERVICE AND UPON MODIFYING AN EXISTING HTDNET SUBSCRIPTION BY CONTACTING VOIP@HTD.NET. IN LIEU OF SIGNING AN ONLINE E911 AGREEMENT, YOU MAY RETURN A E911 SERVICE LIMITATION DISCLOSURE/ACKNOWLEDGEMENT FORM BEFORE STARTING SERVICE, WHEREIN YOU ACKNOWLEDGE

THAT YOU HAVE READ, AND UNDERSTAND THE LIMITATIONS ON VOIP 911 DIALING AS COMPARED TO TRADITIONAL WIRELINE SERVICE. HTDNET WILL NOT PROVIDE SERVICE PURSUANT TO THIS AGREEMENT UNTIL YOU HAVE SIGNED AND RETURNED THE ACKNOWLEDGEMENT OR AGREED ONLINE. YOU WILL RECEIVE ONE E911 RECORD PER BUSINESS ADDRESS UNLESS YOU PURCHASE ADDITIONAL E911 RECORDS FOR ADDITIONAL USERS/LOCATIONS. YOU MUST REGISTER THE PHYSICAL LOCATION FOR EACH E911 RECORD. THE ADDRESS INFORMATION PROVIDED MUST INCLUDE SUFFICIENT INFORMATION TO ENABLE EMERGENCY RESPONDERS TO LOCATE THE CALLING PARTY AND MUST COMPLY WITH ANY MULTILINE TELEPHONE SYSTEM REQUIREMENTS APPLICABLE TO YOU. FOR EXAMPLE, IF APPLICABLE PURSUANT TO ANY APPLICABLE MULTILINE TELEPHONE SYSTEM REQUIREMENTS, IF YOUR LOCATION IS A MULTI-STORY BUILDING, YOU MUST PROVIDE FLOOR AND SUITE NUMBER IN ADDITION TO ADDRESS INFORMATION. YOU ARE REQUIRED TO IMMEDIATELY UPDATE YOUR PHYSICAL LOCATION WHENEVER THE PHYSICAL LOCATION OF YOUR EQUIPMENT CHANGES BY CONTACTING VOIP@HTD.NET. YOU ACKNOWLEDGE THAT THE PHYSICAL LOCATION REGISTERED FOR EACH E911 RECORD WILL BE THE LOCATION TRANSMITTED TO THE EMERGENCY CALL TAKER, AND THAT HTDNET'S ONLY MECHANISM FOR ROUTING 911 CALLS TO THE CORRECT EMERGENCY CALL TAKER IS THE THEN-CURRENT REGISTERED PHYSICAL LOCATION FOR YOU. IF YOU DO NOT ACCURATELY IDENTIFY YOUR LOCATION UPON ORDERING THE HTDNET SERVICE AND/OR DO NOT UPDATE SUCH INFORMATION WHEN YOUR LOCATION CHANGES, 911 COMMUNICATIONS MAY NOT BE DIRECTED TO THE CORRECT EMERGENCY CALL TAKER. WHEN YOU NOTIFY HTDNET OF A CHANGE IN THE REGISTERED LOCATION OF THE COMPANY OR AN INDIVIDUAL USER (FOR A SPECIFIC E911 RECORD), THERE MAY BE A DELAY IN MAKING THE NEW REGISTERED LOCATION AVAILABLE TO ROUTE 911 CALLS AND TO ADVISE THE APPROPRIATE EMERGENCY CALL TAKER OF THE NEW REGISTERED LOCATION. IF YOU FAIL TO PROVIDE A REGISTERED ADDRESS, HTDNET MAY SUSPEND THE VOIP SERVICE. You may register a location by following the instructions from the "911" registration link on your HTDNET phone portal dashboard features page. For purposes of the 911 Dialing feature, you may only register one location at a time for each phone line you use with the Service.

4.5.8.3. CUSTOMER RESPONSIBILITIES. YOU MAY NOT RESELL OR DISTRIBUTE ANY 911 SERVICES OFFERED BY HTDNET. YOU WILL BE SOLELY RESPONSIBLE FOR ANY UNAUTHORIZED USE OF 911 SERVICES PROVIDED BY HTDNET. YOU MAY NOT BLOCK ANY PHONE NUMBER ON A USER HANDSET WHEN DIALING 911. DOING SO MAY INHIBIT THE CORRECT ROUTING OF 911 CALLS WHICH MAY HAVE SERIOUS LEGAL CONSEQUENCES. YOU SHALL BE SOLELY RESPONSIBLE AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS HTDNET, PURSUANT TO THIS AGREEMENT, FOR ANY 911 FAILURE DUE TO YOUR BLOCKING OF 911 CALLS OR FAILURE TO UPDATE YOUR REGISTERED INFORMATION AS REQUIRED.

#### 4.5.8.4. Service Outages.

a) Service Outages Due to Power Failure or Disruption. 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing.

b) Service Outages Due to Internet Outage or Suspension or Termination of Broadband Service or ISP Service. Service outages or suspensions or terminations of service by your broadband provider or ISP will prevent all Service, including 911 Dialing, from functioning.

c) Service Outage Due to Suspension or Termination of Your HTDNET, LLC Account. Service outages due to suspension or termination of your account will prevent all Service, including 911 Dialing, from functioning.

d) Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts. Your ISP or broadband provider or other third party may intentionally or inadvertently block the ports over

which the Service is provided or otherwise impede the usage of the Service. In that event, provided that you alert us to this situation, we will attempt to work with you to resolve the issue. During the period that the ports are being blocked or your Service is impeded, and unless and until the blocking or impediment is removed or the blocking or impediment is otherwise resolved, your Service, including the 911 Dialing feature, may not function. You acknowledge that HTDNET is not responsible for the blocking of ports by your ISP or broadband provider or any other impediment to your usage of the Service, and any loss of service, including 911 Dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you terminate the Service in accordance with this Agreement.

e) Other Service Outages. If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.

4.5.8.5. Re-Activation Required if You Change Your Number or Add or Port New Numbers. 911 Dialing does not function if you change your phone number or if you add or port new phone numbers to your account, unless and until you successfully register your location of use for each changed, newly added or newly ported phone number.

4.5.8.6. Network Congestion: Reduced Speed for Routing or Answering 911 Dialing Calls. There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

4.5.8.7. Possible Lack of Automatic Number Identification. It may or may not be possible for the local emergency personnel to automatically obtain your phone number when you use 911 Dialing. Our system is configured to send the automatic number identification information; however, one or more telephone companies, not us, route the traffic to the emergency response center and that center may not be capable of receiving and passing on that information. As a result, the operator who answers your 911 Dialing call may not be able to automatically obtain your phone number and call you back if the call is not completed or is not forwarded, is dropped or disconnected, if you are unable to speak to tell the operator your phone number, or if the Service is not operational for any reason.

4.5.8.8. No Automated Location Identification. In most service areas, it is not possible at this time to transmit to the local emergency response center the address that you registered for 911 Dialing. You will need to state the nature of your emergency promptly and clearly, including your location (and possibly your telephone number), as the operator will not have this information. Emergency personnel will not be able to find your location if the call is not completed or is not forwarded, is dropped or disconnected, if you are unable to speak to tell the operator your location, or if the Service is not operational for any reason.

4.5.8.9. Disclaimer of Liability and Indemnification. We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither HTDNET nor its officers or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to our 911 Dialing service unless such claims or causes of action arose from our gross negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless HTDNET, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses



(including, without limitation, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

4.5.8.10. Alternate 911 Arrangements. If you are not comfortable with the limitations of the 911 Dialing service, you should have an alternate means of accessing traditional 911 or E911 services or terminating the Service.

#### 4.6. Wireless Internet Services

4.6.1. TERM COMMITMENT, CHARGES, BILLING AND PAYMENT. HTDNET wireless Service(s) may be used with: (a) a mobile device that contains a SIM that is assigned to your account ("Device") and/or, (b) a device that is designed and purchased for use exclusively on HTDNET's network ("Equipment").

4.6.2. Term of Service. Your Agreement begins on the day we activate your Service(s) and continues through the Term of Service, typically a 12 month or 24 month period ("Service Commitment"), specified on your Customer Service Summary. At the end of your service commitment, this Agreement will automatically continue on a month-to-month basis. If your Agreement has no Service Commitment, it is a month-to-month Agreement.

4.6.3. Device Activation. If You purchased a device that was shipped to You, You agree to activate the device within seven (7) days of the shipment date. If Your device is not activated by You, we may activate the device for You at time of delivery or within a month of shipping and Your monthly recurring charges, and any applicable Service Commitment, will begin.

4.6.4. Fulfillment of Service Commitment. You have received certain benefits from us in exchange for your Service Commitment, which may include, but are not limited to, a subsidized wireless device. There are two alternative ways to fulfill your Service Commitment. You can pay for the Services described in your Customer Service Summary for the term of your Service Commitment, or you can terminate your Agreement prior to the end of your Service Commitment and pay an Early Termination Fee ("ETF"). The Early Termination Fee is not a penalty, but rather is an alternative means for you to perform your obligations under the Agreement that partially compensates us for the fact that the Service Commitment on which your rate plan is based was not completed.

4.6.5. Your Termination Rights. Within the first 14 days after service activation, you may terminate your Agreement for any reason and not be required to pay an ETF. If you terminate within three (3) days of accepting the Agreement, HTDNET will refund your activation fee, if any. However, you agree to pay HTDNET for all fees, charges, and other amounts incurred and owed under your Agreement, and you agree to return to HTDNET any Equipment you purchased from HTDNET in connection with your Service Commitment. If you fail to return this Equipment, you will be charged the difference between the amount you paid HTDNET for the Equipment and the amount you would have been charged for the Equipment had you not agreed to a Service Commitment. HTDNET also may charge you a restocking fee for any returned Equipment. Some dealers may impose additional fees.

After the first 14 days, you may terminate your Agreement for any reason. However, you agree to pay HTDNET for all fees, charges, and other amounts incurred and owed under your Agreement along with the applicable ETF. The Early Termination Fee is either: (a) \$325 or (b) \$150. The ETF reduces each full month of your Service Commitment that you complete. To determine whether your Equipment has a \$325 Early Termination Fee or a \$150 Early Termination Fee, and the amount of reduction, contact your sales representative directly.

After your Service Commitment ends and you are on a month-to-month Agreement, you may terminate your

Agreement at any time with 30 days notice without incurring an ETF. If you sign a new Agreement before the end of the term of your existing Agreement and terminate that new Agreement within 14 days as allowed above, you agree that you will be bound by the terms and conditions of your existing Agreement including fulfillment of any remaining Service Commitment thereunder.

4.6.6. HTDNET may interrupt, suspend or cancel your Services and terminate your Agreement without advance notice for any reason including, but not limited to, the following:

- Any conduct that we believe violates this Agreement or HTDNET's Acceptable Use Policy;
- Any conduct that involves the use of abusive, derogatory, insulting, threatening, vulgar or similarly unreasonable language or behavior directed at any of our employees or representatives whether it be in person, over the phone, or in writing;
- Any abusive use of our network or Services;
- You use your Device/Equipment and/or our Services for an unlawful or fraudulent purpose;
- You use your Device/Equipment and/or our Services in any way that: (a) is harmful to, interferes with, or negatively affects our network, other customers, or the network of any other provider, (b) is harmful to, interferes with, or negatively affects our Services or operations, (c) infringes intellectual property rights of HTDNET or others, (d) results in the publication of threatening, offensive or illegal material, or (e) generates spam or other abusive messaging or calling, a security risk, or a violation of privacy;
- You resell our Services either alone or as part of any other good or service;
- You fail to make all required payments when due;
- Your credit has deteriorated and/or we believe that there is a risk of non-payment;
- You refuse to pay any required advance payment or deposit;
- We discover that you are underage;
- You provide inaccurate or misleading credit information; or
- You modify your device from its manufacturer's specifications.

HTDNET's rights under this Section 4.6.1 are in addition to any specific rights that we reserve in other provisions of this Agreement to interrupt, suspend, modify, or cancel your Services and terminate your Agreement.

After your Service Commitment ends and you are on a month-to-month Agreement, HTDNET may terminate your Agreement at any time with 30 days notice.

4.6.7. Service and Rate Changes. From time to time we might make changes to this Agreement. This could include charges, discounts, coverage, technologies, and other Service terms. We commit that we'll provide you with notice either in your monthly bill or separately at least 30 days before we make any materially adverse change. So, for instance, if we increase your rate plan or the price of any of your Services more than what we've previously told you (such as in your Customer Service Summary) those would be materially adverse changes. But, not all changes are materially adverse. For example, here is a list of some changes that are not materially adverse: (1) increases to international roaming rates; (2) increases to charges for international long distance rates; (3) increases to HTDNET fees and taxes imposed by the government and passed on to you; and (4) changes to surcharges and regulatory cost recovery charges that do not exceed the limits set forth in your Agreement. We also want you to know that, if we make a materially adverse change during your Service Commitment (if any), you can cancel impacted Service without paying an early termination fee. But, you do need to notify us of your desire to cancel Service at the following address within 30 days of receiving the notice: HTDNET, 4712 Dumfries Road, Catlett, VA 20119.

4.6.8. You will receive an electronic (paperless) bill via e-mail. We do not offer paper or mailed invoices. Each month we will send you an email notice when your electronic bill is available online. This will be sent to your official email address on file with HTDNET. You are required to keep your email address current and to notify us immediately of any change in your email address.

You are responsible for paying all charges for or resulting from Services provided under this Agreement, including any activation fee that may apply to each voice or data line. You will receive monthly bills that are due in full.

IF YOU DISPUTE ANY CHARGES ON YOUR BILL, YOU MUST NOTIFY US IN WRITING AT HTDNET BILL DISPUTE, 4712 DUMFRIES ROAD, CATLETT, VA 20119 WITHIN 100 DAYS OF THE DATE OF THE BILL OR YOU'LL HAVE WAIVED YOUR RIGHT TO DISPUTE THE BILL AND TO PARTICIPATE IN ANY LEGAL ACTION RAISING SUCH DISPUTE.

Charges include, without limitation, airtime, roaming, recurring monthly service, activation, administrative, and late payment charges; regulatory cost recovery and other surcharges; optional feature charges; toll, collect call and directory assistance charges; restoral and reactivation charges; any other charges or calls billed to your phone number; and applicable taxes and governmental fees, whether assessed directly upon you or upon HTDNET.

To determine your primary place of use ("PPU") and which jurisdiction's taxes and assessments to collect, you're required to provide us with your residential or business street address. If you don't provide us with such address, or if it falls outside our licensed Services area, we may reasonably designate a PPU within the licensed Services area for you. You must live and have a mailing address within HTDNET's owned network coverage area.

**Auto Bill Pay:** If you enroll your account for automatic bill payments ("Auto Bill Pay"), you authorized HTDNET to charge your debit/credit card or bank account automatically to pay your monthly statements, as well as any unpaid balances and fees if your HTDNET service is disconnected. To cancel your authorization for Auto Bill Pay, you must call 1-540-905-8111. You should also contact your card issuer or financial institution to advise that you have cancelled your enrollment. You will lose any promotional credits associated with your account if you opt out from Auto Bill Pay.

4.6.9. Mobile Device. Your Device must be compatible with, and not interfere with, our Services and must comply with all applicable laws, rules, and regulations. We may periodically program your Device remotely with system settings for roaming service, to direct your Device to use network services most appropriate for your typical usage, and other features that cannot be changed manually. Some device manufacturers will no longer pre-load certain applications into the device memory. As a result, HTDNET may remotely pre-load certain applications to your device at activation and periodically update those applications. You can delete any application that HTDNET remotely pre-loads on your device.

You agree that you won't make any modifications to your Equipment or its programming to enable the Equipment to operate on any other system. HTDNET may, at its sole and absolute discretion, modify the programming to enable the operation of the Equipment on other systems.

If you bought a Device from HTDNET, it may have been programmed with a SIM lock which will prevent it from operating with other compatible wireless telephone carriers' services. If you wish to use this Device with the service of another wireless telephone carrier, HTDNET will unlock your device if you meet certain qualifications including, but not limited to the following: (a) you have paid for your Device in full; (b) your device was purchased on an installment plan and the service on your wireless number has been active for at least sixty days and is in good standing (i.e. it has no past due amount owed HTDNET); (c) you have fulfilled your Service Commitment by expiration of any contractual term; (d) your Device has not been reported lost or stolen; and (e) HTDNET has the Unlock Code (where applicable) or can reasonably obtain it from the manufacturer. For Devices sold with a Prepaid Plan, HTDNET will unlock your device upon request when you have completed six (6) months of HTDNET Prepaid service. For further details on eligibility requirements and for assistance on unlocking your device, please contact your sales representative directly.

You are solely responsible for complying with U.S. Export Control laws and regulations and the import laws and regulations of foreign countries when traveling internationally with your Device. Your device may not be eligible for international services please contact your sale representative directly with questions regarding international service.

4.6.10. Availability. HTDNET does not guarantee availability of wireless network. Services may be subject

to certain Device and compatibility/limitations including memory, storage, network availability, coverage, accessibility and data conversion limitations. Services (including without limitation, eligibility requirements, plans, pricing, features and/or service areas) are subject to change without notice.

When outside HTDNET's coverage area, access will be limited to information and applications previously downloaded to or resident on your device. Coverage areas vary between HTDNET network technologies. See coverage map(s), available at store or from your sales representative, for details or the coverage map request directly from your sales representative.

Actual network speeds depend upon device characteristics, network, network availability and coverage levels, tasks, file characteristics, applications and other factors. Performance may be impacted by transmission limitations, terrain, in-building/in-vehicle use and capacity constraints.

4.7. HTDNET Equipment. To use certain HTDNET Services, you must either purchase certain HTDNET equipment ("Equipment"), or utilize one or more industry standard Service compatible device/s provided by an independent third party if you receive the prior approval of such use by HTDNET's management, which approval may be withheld in the sole discretion of HTDNET. You understand and agree that the Equipment, along with certain related software may be required to obtain updates or upgrades to the foregoing from time to time. Your ability to use certain Services may be affected by the performance of these items. You acknowledge and agree that system requirements for the Services may change from time to time and that adherence to the system requirements is your responsibility. You are responsible for ensuring that your networks and systems are adequately secured against unauthorized intrusion or attack and for regularly backing up your data and files in accordance with good computing practices. You shall be responsible for maintaining the security of any required user names and passwords (including both for the Account Administrator and users), and shall not disclose them to any third party. You are also bound by the additional terms for VoIP-enabled Equipment in Schedule A hereto.

#### 4.8. Software.

4.8.1. Software License Terms. The software and related documentation provided or made accessible under this Agreement are licensed to you by HTDNET in accordance with and subject to the terms and conditions set forth in the appropriate End User License, available upon your request. You are entitled to a nonexclusive, nontransferable, non-sublicensable, limited license to use certain third-party software per this Agreement. You understand and agree that the software, and all copies thereof, including translations, compilations, derivative works and partial copies, are and will at all times remain the property of third-party licensor or its licensors. By using the software, and in executing this Agreement, you agree to the terms and conditions of the applicable End User License. Upon termination or expiration of this Agreement, you shall cease and desist all use of the software, and, in accordance with HTDNET's instructions, irretrievably delete, return and/or destroy any software provided pursuant to this Agreement installed or downloaded at your site or on your devices or otherwise made available to or accessible by you, as well as any related documentation; and an authorized representative of you or your company must promptly certify, in writing, compliance with the foregoing requirements, at HTDNET's request. You shall immediately notify HTDNET if you become aware of any misappropriation of confidential information or infringement of Intellectual Property Rights as it pertains to software provided pursuant to this Agreement and/or any related documentation. HTDNET may terminate the license granted herein at any time if you fail to abide by the terms of this Agreement related to use of the software or the applicable End User License.

4.8.2. Software Updates. HTDNET and/or third-party software may automatically (push or pull – download) and install updates from HTDNET and/ or affiliated or third-party equipment manufacturers from time to time. Updates may take the form of bug fixes, new or enhanced functionality, new software modules, and updated or new versions of the software, and are intended to improve or enhance the Service. You agree to allow such updates to be promptly downloaded and installed as part of its utilization of any HTDNET Service.

4.9. Resale. You may not resell any Services unless you have been given express written authorization by HTDNET. Any such resale will be governed by these TOS as well as any separate resale agreement between the parties. If you have received written permission from HTDNET to resell all or part of the Services that you are receiving pursuant to these TOS, you are responsible for providing support to your clients. If HTDNET is contacted directly by any such client, HTDNET may suspend all or part of the Services that it is providing to you. If HTDNET does so, HTDNET will give you notice of the suspension and the reason for the suspension. Once you have satisfied HTDNET that you have taken reasonable steps to inform your clients that they are to contact you for support and to ensure that you are providing that support, HTDNET may lift the suspension. There is no abatement of Fees during any such suspension. Furthermore, any acts and omissions of your clients that would be breaches of this Agreement had they been your acts or omissions are your responsibility and will be treated as if they are your acts and omissions.

4.9 Additional Services. Any services in addition to the Services listed and described on HTDNET's website related to the Services that are requested by you and that HTDNET in its sole discretion provides ("Additional Services") are deemed to be Services provided pursuant to these TOS, and they will be provided at HTDNET's then current rates.

4.10. Support.

4.10.1. FAQs. HTDNET maintains a list of frequently asked questions relating to the Services on the Site.

4.10.2. Technical Support. HTDNET will provide technical support relating to the Services via its Customer Support center. Customer Support aims to provide real-time technical support to the best of its ability. The Customer Support team is available as listed on the Site. Contact information and operating hours for HTDNET's Customer Support team are subject to change without notice. You should consult the Site for current hours and contact information. Customer Support can be reached by at least one of the following: (i) telephone; or (ii) email (iii) chat. The email address and the telephone number that you should use are set out on the Site.

4.10.3. Verifiable. HTDNET will use commercially reasonable efforts to resolve each problem reported to HTDNET's Customer Support center and verifiable as being a problem or deficiency with the Services.

4.10.4. Assistance. When you report a problem to HTDNET's Customer Support center, you will provide: (i) any assistance reasonably necessary to allow HTDNET to verify and resolve that problem; and (ii) all information that you are reasonably able to provide with respect to any problem.

4.10.5. Maintenance Window. HTDNET may at any time and without liability modify, expand, improve, maintain, or repair the HTDNET network even if such activity might result in temporary suspension(s) of the operation of your Services. HTDNET will use commercially reasonable efforts to minimize any disruption to the Services and shall use its best efforts to give you commercially reasonable notice of a maintenance period prior to the disruption by telephone (real-time or voicemail), facsimile, or e-mail.

4.10.6. When reasonably possible, any maintenance of the Services or the hardware or software used to host your Services will be conducted after normal business hours (EST). In the event of an emergency, HTDNET will make reasonable efforts to inform customers in advance of the emergency maintenance

window and the impact it will have. When choosing a maintenance window to use, HTDNET takes into account where the customers who may be affected by the maintenance activities are located (based on the addresses given to HTDNET by the customers).

4.10.7. Billing. Billing and account support is available via the web-based tool that HTDNET provides to you to manage your account. Billing portals and other account management tools are available at <https://www.htd.net/accounts/> Please check the Site for the hours that apply to your jurisdiction for any live support.

4.10.8 Access Right. You shall provide HTDNET, its agents, independent contractors, employees, directors and/or other representatives and/or its third-party supplier with timely access to property and equipment you control as reasonably required for HTDNET to provide support for the Services at no cost to HTDNET and/or its third-party supplier. You will also obtain, at your expense, timely access for HTDNET and/or its third-party supplier as reasonably required for the Services to property controlled by third parties, such as a landlord. Except in an emergency, you shall grant or obtain consent for HTDNET and/or its third-party supplier, to enter upon your property and premises, as applicable, which consent shall not be unreasonably withheld. Access rights mean the right to construct, install, repair, maintain, inspect, replace and remove Service components and the right to use ancillary equipment space within a building to connect your site to HTDNET's provider's network. HTDNET and you will provide HTDNET's provider with timely information about and access to your facilities and equipment as reasonably required to provide the Services, subject to reasonable security policies. HTDNET and you will have the responsibility to furnish any conduit, holes, wire ways, wiring, plans, equipment, space, power/utilities and other items as HTDNET's provider reasonably requires for the Services and to obtain any necessary licenses, permits and consents (including easements and rights-of-way). Your site/s must be ready for HTDNET's provider to perform its work according to agreed upon schedules.

4.10.9. Safe Working Environment. Your site/s at which HTDNET's provider installs, maintains or provides Services must be a safe working environment, free of Hazardous Materials and be reasonably suitable for the Services. "Hazardous Materials" mean any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. HTDNET's provider shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials.

## **5. CONTENT**

5.1. Intellectual Property and Content. No intellectual property rights are transferred by HTDNET to you by these TOS. HTDNET reserves all rights, including, but not limited to, ownership, title, and all other rights and interest in, and to, any computer programs (in object or source code format or any other form), know-how, inventions, processes, databases, documentation, training materials and any other intellectual property and any tangible embodiments of it (collectively, "Intellectual Property") that HTDNET (i) owned prior to providing the Services under the Agreement, (ii) any Intellectual Property that HTDNET develops, creates, or otherwise acquires independently of this Agreement, and (iii) any derivative works or Intellectual Property that HTDNET develops, creates, or otherwise acquires while performing the Services under the Agreement. HTDNET and/or its licensors own all right, title, and interest in and to the Service, associated software, and the content of all information and communications, whether visual, written, audible, or of another nature presented by or on behalf of HTDNET as part of the Service ("HTDNET's Content"). You shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works based in whole or part upon HTDNET's Content. Nothing in this Agreement grants you any right to use any of HTDNET's trade names, trademarks, service marks, logos, domain names, trade dress, or other distinctive brand features. You shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within HTDNET's Content, the Service, or associated software or servers.

5.2. Your Content. "Your Content" means all materials, information, data or code that you (or someone acting on your behalf, or via your account with HTDNET) upload, store, transmit, receive or process in connection with the Services. You are solely responsible for Your Content, including any loss or damage to HTDNET or any third parties as a result of transmission of Your Content using the Services. HTDNET has no responsibility to you or any third party for Your Content. You shall retain copyright and any other Intellectual Property rights you hold in Your Content. You shall remain solely responsible for protecting and enforcing such rights where applicable.

5.3. You hereby grant to HTDNET and its directors, officers, employees, agents, consultants or subcontractors the right to use, reproduce, transmit and delete (as applicable) Your Content in such manner as may be necessary to enable HTDNET to perform the Services and otherwise exercise any right or perform any obligations under this Agreement.

5.4. Monitoring Your Content. Although HTDNET is not obligated to monitor content and assumes no responsibility for Your Content or the content of its other customers, HTDNET reserves the right, subject to all applicable laws, to investigate Your Content and may block access to, refuse to host, or remove any information or material that it deems to be in breach of section 6.1.

5.5. HTDNET shall endeavor to store your voicemail, sent or received call logs, and/ or instant messages if it is a part of the Service ordered. However HTDNET is not obligated to do so and HTDNET has no responsibility or liability for the deletion or failure to store any of the foregoing.

5.6. Other Users' Content. HTDNET does not control and shall have no liability or responsibility for the 1) conduct or 2) content of any information and communications, whether visual, written, audible, or of other nature, sent, displayed, uploaded, posted, published, or submitted by other users via the Service, including but by no means limited to advertisements or sponsored content (item (2) collectively referred to as "Other Users' Content"). Other Users' Content may be protected by copyright and other Intellectual Property rights of such other users or other persons. You shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works based in whole or part upon Other Users' Content unless specifically agreed to by the owners of such Other Users' Content in a separate written agreement with you. It is HTDNET's policy to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including in the United States the Digital Millennium Copyright Act) and to terminate the accounts or subscriptions of repeat infringers.

## **6. ACCEPTABLE USE**

6.1. Unacceptable Use. Unacceptable use refers to any unlawful, illegal or inappropriate use as set out in this section 6. You may not use the Services or HTDNET's technology infrastructure in any manner that constitutes an unacceptable use. Unlawful or illegal use is the creation, collection, transmission, storage or exchange of any material in violation of any applicable law or regulation. Inappropriate use includes any use or behavior that may: (i) jeopardize HTDNET's products, services, technology infrastructure or ability to operate; or (ii) expose HTDNET to civil liability. Unlawful, illegal or inappropriate use includes use of the Services to:

6.1.1. possess, store, view, download, transmit, distribute (by any peer-to-peer service or otherwise) or traffic any materials that:

6.1.1.1. include child pornography;

6.1.1.2. infringe any person's copyright or other intellectual property right (including unlicensed or improperly licensed applications, music, games or other materials);

6.1.1.3. willfully promote hatred against or defame any identifiable individual, group or other organization;

6.1.1.4. can be used for attacking computer systems and networks and defacing websites (including scripts, executables or other tools).

6.1.1.5. include any form of malware

6.1.2. make threats to a person's safety, property or financial well-being;

6.1.3. defame other persons;

6.1.4. interfere with the services that HTDNET provides to its other customers;

6.1.5. interfere with, disrupt or damage the servers used by HTDNET to provide such services, those of HTDNET's suppliers or those of HTDNET's other customers;

6.1.6. impersonate or falsely state or otherwise misrepresent your identity or affiliation with any person or entity;

6.1.7. willfully bypass or subvert the physical, logical or procedural safeguards such as firewalls, web-filtering software or other access controls used by anyone to gain unauthorized access to anyone's technology infrastructure or distributing computer programs designed to assist in doing so;

6.1.8. any act in violation of any applicable local, provincial, state, national or international law or regulation including any laws relating to:

6.1.8.1. the export of data or software;

6.1.8.2. the protection of human rights;

6.1.8.3. the promotion of hatred;

6.1.8.4. defamation;

6.1.8.5. criminal offences;

6.1.8.6. the protection of intellectual property; or

6.1.8.7. including the sending of commercial electronic messages without consent from the recipients.

6.1.9. Unacceptable uses of the Services or HTDNET's technology infrastructure may also include but are not limited to: ailing, unsolicited emails, newsgroup spamming, hardcore pornography (including but not limited to the use of animals in such pornography) or links to such sites, copyrighted MP3, illegal content, copyright infringement, trademark infringement, warez, cracks, software serial numbers, and running of any scripts, executables, or other programs or processes that can in any way adversely affect the performance of HTDNET's technology infrastructure. HTDNET will be the sole and final arbiter as to what constitutes a violation of this policy.

6.2. Disruptive Uses. You may not use the Services or HTDNET's technology infrastructure in any manner that interferes with or disrupts HTDNET's other customers. When any of the following events occurs in relation to any Service, it is a disruptive use, a breach of these TOS and HTDNET may exercise its rights under section 6.6 including suspending Services:



6.2.1.1. generating a daily, weekly or monthly volume of network traffic that is excessive in relation to amount of network traffic typically generated by HTDNET's other customers who have purchased similar services;

6.2.1.2. generating spikes in network traffic usage that are out of proportion (in volume or frequency) to those typically generated by HTDNET's other customers who have purchased similar services;

6.2.1.3. on a daily, weekly or monthly basis, consuming CPU or other processing resources in a manner that is excessive in relation to amount of network traffic typically generated by HTDNET's other customers who have purchased similar services;

6.2.1.4. even if they do not come within (i), (ii) or (iii) above, running peer-to-peer applications, peer-to-peer file sharing, proxy servers, bit torrent, online gaming servers, proxy server network, interactive relay chat (IRC), interactive chat applications, membership or community sites, file sharing, video sharing, photo sharing or other resource intensive services or applications.

6.2.1.5. using disk space to store materials unrelated to or unnecessary for using the Services (for example, using disk space for data warehousing, email storage, backups of emails accounts, backups of all or part of any computing, telecommunications or mobile device or other forms of mass data storage); or

6.2.1.6. the sending of any commercial electronic messages promoting your web site or otherwise directing attention to your web site to any recipient without the recipient's consent.

6.2.1.7. No "Spam": UCE/UBE or "spam" originating from a server located on our network or associated with a HTDNET server or Service is not tolerated. This includes any email that promotes websites hosted on a server located on the HTDNET network, but which is sent from an email address not associated with a HTDNET account.

6.3. Music, Image and Video Files. Responding to and addressing copyright complaints is a time consuming process. From time to time, HTDNET may scan its servers looking for MP3, MP4 and other file formats commonly used for music, images or video. If such files are detected amongst Your Content, HTDNET may ask you to demonstrate that they are: (i) owned or properly licensed by you; and (ii) if licensed, not being used in a manner that is inconsistent with that license. If you fail to do so for any file or, in the alternative, remove the file from HTDNET's servers, it is a breach of this section 6.3 and HTDNET may exercise its rights under these TOS including, but not limited to, section 6.6 and section 5.3

6.4. Reporting. If you become aware that any person has committed, is likely to have committed or is likely to commit any act described in section 6.1, you will promptly report it to HTDNET's Customer Support center.

6.5. Investigation. HTDNET reserves the right to investigate suspected breaches of this section 6; you agree to cooperate with HTDNET when asked to assist in any such investigation.

6.6. Breaches. HTDNET may take any lawful action it deems appropriate with respect to prohibited use of the Service or other use of the Service that it deems to be inappropriate, in violation of this Agreement, or potentially disruptive to the Service or HTDNET's network, HTDNET's rights and interests, or the rights of other customers. HTDNET's remedies for your prohibited use of the Service, include but are not limited to issuing warnings; terminating your Service, subscription, accounts, or users; disabling access to or suspending the Service, subscription, or accounts; or increasing the monthly rates charged for the period of your prohibited use and the remainder of the Agreement's term. HTDNET may take such action without notice or liability to your or any other party, although HTDNET shall have no obligation to take any such action. If HTDNET incurs any costs as a result of any prohibited use of the Service by you, you shall be solely and exclusively liable for such costs. HTDNET shall bill, and you agrees to pay, any such charges.

6.7. Others Breaches. HTDNET assumes no liability for enforcing or not enforcing the provisions in its other service agreements relating to acceptable use.

## 7. IP ADDRESSES

7.1. HTDNET may assign one or more Internet Protocol addresses to you for use with the Services. You acknowledge that you have no right, title or interest in or to any IP addresses assigned to you by HTDNET or its representatives in connection any Services. HTDNET or its suppliers may change any such address at any time, but HTDNET will use reasonable efforts to give you notice of any change if the affected IP address is a fixed IP address.

## 8. PAYMENT

8.1. Fees. The fixed fees and/or rates applicable to any Service are set out in the online order form for the Service (the "Fees"). They may include one-time fees (these are typically for setting up the Service) and recurring fees. PLEASE NOTE THAT THE ONLINE ORDER FORM MAY ALSO SET OUT A RATE INCREASE THAT WILL BECOME EFFECTIVE UPON THE EXPIRATION OF A PROMOTIONAL RATE. SUCH AN INCREASE WILL HAPPEN WITHOUT FURTHER NOTICE TO YOU. Otherwise, HTDNET will give you at least 30-days prior written notice of any increase to the Fees.

8.2. Promotions. From time to time, HTDNET may offer its Services to new or existing customers at discounted or promotional rates. You acknowledge that any such promotion is only applicable to one of your Services if the promotion or discount is clearly set out as applicable on the online order form used that you used to order the Service.

8.3. Expenses. Unless expressly set out otherwise in an applicable Service Description, you will reimburse HTDNET for all registrar's fees or other related expenses incurred by HTDNET in relation to any third-party service described herein or in the Service Descriptions. Domain registration fees are non-refundable.

8.4. Taxes. All charges for the Services are exclusive of any taxes or regulatory fees. Except for taxes based on HTDNET's net income or for taxes which you provide a valid exemption certificate, you shall be responsible for payment of all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, or other taxes, duties, fees, charges or surcharges. HTDNET will give effect to any valid exemption certificate provided to the extent it applies to any Service billed by HTDNET to you following HTDNET's receipt of such exemption certificate. Provided that HTDNET timely identifies the taxes and fees payable by you, you shall indemnify, defend and hold HTDNET harmless from payment and reporting of all such taxes and fees, including costs, expenses, and penalties incurred by HTDNET in settling, defending or appealing any claims or actions brought against HTDNET related to, or arising from, your non-payment of taxes or fees.

8.4.1. Regulatory Fees. HTDNET may charge you the following regulatory fees on certain Services:

a. Federal and State Universal Service Fee. HTDNET is required to make contributions to the Federal and certain state Universal Service Funds (USF), which provide support to promote access to telecommunications services at reasonable rates for those living in rural and high-cost areas, income-eligible consumers, rural health care facilities, and schools and libraries. HTDNET is permitted but not required to recover such costs from its customers. The Federal Communications Commission sets the Federal USF rates on a quarterly basis. USF rates are subject to change each quarter.

b. 911 Fee. This fee is imposed by local governments to help pay primarily for the handling of calls for emergency services such as fire and rescue.

c. 911 Service Fee. HTDNET may charge a per-DID/ phone number fee to recover HTDNET's costs directly associated with providing 911 and E911 to its customers.

d. Regulatory Recovery Fee. HTDNET may charge a monthly regulatory recovery fee to offset costs it incurs in complying with obligations imposed by, and inquiries made by, federal, state, and municipal regulatory bodies/governments and related legal and billing expenses. This fee is not a tax or charge required or assessed by any government.

e. Other Fees. You agree to pay any other fees that may be levied on the Services which are chargeable to customers by any governmental authority.

8.5. Payment of Fees. HTDNET accepts payment by credit card, ACH (eCheck), Check, Cash, and Online Services (Including Visa, MasterCard, American Express, eCheck, Paypal, etc). Please do not mail cash payments. Checks should be made out to: "HTDNET, LLC"

8.6. In Advance. Payment for Services is in advance. When you order a Service, you are required to pay the full amount of Fees for the initial term and applicable taxes. When a Service renews, you are required to pay the full amount of Fees for the renewal term and applicable taxes. A Service renews when it has not been terminated by you prior to the last date of the initial term or any renewal term for which you have paid.

8.7. Additional Services. Fees for Additional Services, applicable taxes and reimbursable expenses are due and payable according to Invoice due dates, or per written agreement between you and HTDNET.

8.8. Automatic Charging. When HTDNET is entitled in accordance with this Agreement to any Fees, applicable taxes or expenses, such amounts will be automatically charged to the credit card that HTDNET has on file for you and you authorize HTDNET to do this. HTDNET will send an invoice for these amounts to the email address that it has on file for you before doing so.

8.9. Chargebacks. Please note that should any amount that you pay be charged back to HTDNET, you will incur an additional non-refundable Fee of \$35.00 per chargeback.

8.10. Non-payment. If payment has not been received by the due date HTDNET may restrict, suspend or terminate the affected Services; and HTDNET reserves the right to charge interest on the overdue payment at the rate of one and a half percent (1.5%) per month (or the maximum rate permitted by law, whichever is less). You must dispute any charges for the Services in writing within thirty (30) days after the date of the occurrence that forms the basis for the dispute; otherwise you waive any dispute or further recourse with respect to the applicable charges. If a billing dispute is resolved in your favor and you withheld the disputed amount, no interest credits or penalties will apply. If the dispute is resolved against you, and you withheld the disputed amount, you shall pay such withheld amount due plus interest from the date the payment was originally due. A dispute may not be based upon a claim that all or a portion of the charges for the Services were incurred by unauthorized users. You remain solely responsible for all use of Services ordered by you or billed to your account pursuant hereto, for determining who is authorized to use your service, and for promptly notifying HTDNET of any unauthorized use. In the event of nonpayment, HTDNET reserves the right to assign the late balance to a collection agency and you agree to reimburse HTDNET for all expenses related to its collection efforts, including, but not limited to reasonable attorneys' fees.

## **9. TERM**

9.1. Term. This Agreement shall be effective as of the date on which you order your first Service and shall continue until terminated in accordance with the terms and conditions set out in the remainder of this section 10 (the "Term").

## 10. SUSPENSION AND TERMINATION

10.1. Suspension. If you breach any of these TOS, HTDNET may, in its sole discretion, restrict or suspend the Services, without prior notice to you and without an opportunity to cure the breach. If you are given an opportunity to and you cure the breach or you demonstrate to HTDNET's satisfaction that you have taken steps to prevent future breaches of the TOS, HTDNET may lift the restriction or suspension. HTDNET will give you notice of any suspension or restriction. Whether or not a restriction affects your access to Your Content is in HTDNET's sole discretion. PLEASE NOTE THAT FEES MAY BE CHARGED DURING THE PERIOD OF ANY SUSPENSION OR RESTRICTION OF SERVICES.

10.2. By You. You may terminate any Service at any time by using the web-based tool that HTDNET provides to you to manage your account to terminate the Service. PLEASE NOTE: Subject to section 8.10, any amounts paid in advance for Services will not be refunded upon such termination for cause, you will remain responsible any termination fees as specified herein or in the applicable Service Order.

10.3. By HTDNET. HTDNET may terminate any Service for any reason by giving you at least 30 days written notice of the termination date. HTDNET may terminate this Agreement immediately and without prior notice to you:

10.3.1. if you breach section 6 (Acceptable Use);

10.3.2. if you breach section 8 (Payment) and do not cure that breach within 10 days of the breach; or

10.3.3. if you breach any other section of these TOS and do not cure that breach within 15 days.

10.3.4. In the event of termination of this Agreement or of your HTDNET subscription, you shall immediately cease use of the Service and permanently destroy all copies of the software portion thereof within your possession or control. Such software must be end-user accessible and suited for such destruction without damaging any hardware associated therewith. All software licenses granted in conjunction with, and all subscriptions to the Service shall terminate immediately upon the termination of this Agreement. Upon termination, HTDNET may deactivate or delete your account and all related information and files therein and/or bar any further access thereto, and you shall have no further access to any you-assigned DID/ telephone number (unless Port-Out of such phone number was completed prior to termination of this Agreement).

10.4. Survival. All provisions concerning confidentiality, license grant and restrictions, IP ownership, warranty disclaimers, limitation of liability, and indemnity (as well as any other terms which, by their nature, are intended to survive termination) of this Agreement will survive the expiration of your HTDNET subscription and any termination of this Agreement.

10.5. Renewals. Services purchased for a set period (for example, three years) will be automatically renewed upon the expiry of that period unless you give HTDNET written notice of your intention to terminate them at least 30 days prior to the expiry of that period. They will be renewed at HTDNET's then current rates for such Services.

## 11. WARRANTIES AND DISCLAIMERS

11.1. HTDNET PROVIDES THE SERVICES, INCLUDING WITHOUT LIMITATION THE SOFTWARE, WEBSITES, SERVERS, CONTENT, SUBSCRIPTIONS, AND ACCOUNTS, ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOUR USE OF THE SERVICES IS AT YOUR OWN RISK. NEITHER HTDNET NOR ITS LICENSORS OR SUPPLIERS MAKE ANY EXPRESS REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH REGARD TO THE SERVICES OR OTHERWISE RELATED TO THE AGREEMENT. HTDNET DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF THE SERVICES OR THAT THE SERVICES WILL PREVENT TOLL FRAUD. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HTDNET DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER HTDNET, ITS LICENSORS, NOR SUPPLIERS REPRESENT OR WARRANT THAT (I) THE SERVICES WILL MEET YOUR REQUIREMENTS OR PROVIDE ANY SPECIFIC RESULTS, (II) YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR VIRUS OR ERROR FREE, (III) INFORMATION OR CONTENT PROVIDED TO YOU THROUGH THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, (IV) DEFECTS IN THE SERVICE WILL BE CORRECTED, OR (V) THE SERVICES WILL HAVE ANY PARTICULAR UP-TIME, QUALITY OF SERVICE, OR QUALITY OF VOICE OR FAX COMMUNICATIONS.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER HTDNET, ITS LICENSORS, NOR SUPPLIERS SHALL HAVE ANY RESPONSIBILITY TO YOU OR ANY THIRD PARTY FOR DAMAGE RESULTING FROM THE USE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO DAMAGE TO ANY DEVICE OR LOSS OF DATA RESULTING FROM THE DOWNLOADING, OTHERWISE ACCESSING, OR USING ANY CONTENT, MATERIAL, OR DATA THROUGH THE SERVICE. DOWNLOADING, OTHERWISE ACCESSING, AND USING SUCH CONTENT, MATERIAL, OR DATA IS AT YOUR OWN RISK. HTDNET DOES NOT HAVE ANY RESPONSIBILITY FOR RETAINING ANY USER INFORMATION OR CONTENT OR COMMUNICATIONS BETWEEN USERS.

## **12. LIMITATIONS OF LIABILITY**

12.1. LIMIT. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF HTDNET (INCLUDING ITS REPRESENTATIVES AND SUPPLIERS) TO YOU FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCEED THE AMOUNT PAID BY YOU DURING THE 12 MONTH PERIOD PRECEDING THE DATE ON WHICH YOU MAKE YOUR FIRST CLAIM FOR DAMAGES.

12.2. INDIRECT DAMAGES. HTDNET (INCLUDING ITS REPRESENTATIVES AND SUPPLIERS) SHALL NOT BE LIABLE TO YOU OR YOUR END USERS IN ANY WAY WHATSOEVER, FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF DATA, REVENUE OR PROFIT RESULTING FROM OR ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OR USE OF THE SERVICES. THIS LIMITATION SHALL APPLY WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE, OR WHETHER HTDNET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.3. Some jurisdictions do not allow the exclusion of incidental, special or consequential damages. If any jurisdiction having applicability to the TOS does not permit any such exclusion or limitation, HTDNET's total liability to you in connection with any incidental, special or consequential damages will be limited by section 12.1.

12.4. Allocation of Risk. You and HTDNET understand and agree that, to the extent permitted by applicable law, the foregoing exclusions and limitations of liability represent the parties' agreement as to allocation of risk between them in connection with their respective obligations under this Agreement. The Fees payable to HTDNET reflect, and are set in reliance upon, this allocation of risk and the exclusions and limitations of liability set forth in this Agreement.

## **13. INDEMNIFICATION**

13.1. You agree to indemnify and hold HTDNET and its affiliates, directors, officers, employees, and agents harmless from and against any liabilities, losses, damages or costs, including reasonable attorneys' fees, incurred in connection with or arising from any third-party allegations, claims, actions, disputes, or demands asserted against any of them as a result of or relating to: (i) Your Content; (ii) violation of this Agreement (including but not limited to fraudulent or illegal use of the Services), (iii) any negligent acts or omissions or willful misconduct of you, your End User or anyone acting on your behalf or (iv) infringement or violation of any intellectual property or other right of any person or entity in connection with this Agreement.

## **14. AGREEMENT**

14.1. Entire Agreement. The Agreement, including any Attachments, constitutes the entire understanding of the parties with respect to the subject matter of the Agreement and will supersede all previous and contemporaneous communications, representations or understandings, oral and/or written, between the parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the parties. If any provision of the Agreement is determined to be unenforceable or invalid by court decision, the Agreement will not be rendered unenforceable or invalid as a whole, and the original unenforceable provision will be changed only minimally as required for it to be enforceable and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law. The failure of either party to assert any of its rights under the Agreement, including, but not limited to, the right to terminate the Agreement in the event of breach or default by the other party, will not be deemed to constitute a continuing or permanent waiver by that party of its right to enforce each and every provision of the Agreement in accordance with their terms. This Agreement shall be deemed to have been drafted by both parties and, in the event of a dispute shall not be construed against either party. All Schedules to this Agreement and any amendments, modifications, substitutions, additions, deletions or any other alterations, as may be made from time to time, to any of the Schedules, Annexes and/or Exhibits, shall be deemed to form a part of this Agreement. The terms and conditions set forth in this Agreement shall apply to all Schedules or attachments unless otherwise specifically stated. To the extent reasonably possible, the provisions of this main body of the Agreement and any attachment shall be interpreted so as to avoid any conflict between them. In the event of an express conflict between a term(s) of this main agreement and the term(s) of any Service Schedule/Exhibit and/or Service Order or request, precedence will be given in the following order: (a) the Service Order or request but solely with respect to the Service covered by that Service Order or request and provided that an authorized representative of HTDNET has executed such Service Order or request; (b) the Service Schedule/Exhibit but solely with respect to the Service covered by that Service Schedule; and (c) this master agreement.

14.2. Severability. Should any provision of this Agreement be held to be invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the extent permissible, and all other provisions will remain in effect and are enforceable by the parties.

14.3. Waiver. No waiver of any part of this Agreement will be deemed to be a waiver of any other provision. No term of this Agreement will be deemed to be waived by reason of any previous failure to enforce it. No term of this Agreement may be waived except in a writing signed by the party waiving enforcement.

14.4. Interpretation. The headings used in the Terms are for convenience of reference only. No provision of the Terms will be interpreted against any party merely because that party or its legal representative drafted the provision. All remedies are cumulative. Throughout the TOS, the term "including" or the phrases "e.g.," or "for example" have been used to mean "including, without limitation".

## **15. ASSIGNMENT**

15.1. TOS. HTDNET may assign its rights and obligations hereunder without your prior consent. Any assignment of the Agreement or any rights or obligations under the Agreement by you without the express written consent HTDNET will be invalid. HTDNET may partner with others or subcontract any or all of its obligations under the Agreement, but will retain its responsibility to you for the timely performance of the work necessary to the provision of Service properly paid for by you.

15.2. Domain Names. These TOS do not restrict your ability to transfer any domain for which you are the registrant. If HTDNET is the registrar for the domain name, please request our "domain name transfer instructions" by sending an email to [itsupport@htd.net](mailto:itsupport@htd.net). We will send you the specific details and information about transfer of ownership.

## **16. NOTICE**

16.1. Notice. Any notice or other significant communication given to you pursuant to the TOS will be in writing, addressed to any email address or address that you provided to HTDNET when acquiring your first Service (as updated by you in accordance with section 3.2) and sent to you by email or by nationally recognized overnight courier as applicable. Any notice or other significant communication given to HTDNET pursuant to the TOS will be in writing and sent to HTDNET at the address then listed on the Site in the Contact Us section by fax or nationally recognized courier. Notices will be deemed to have been received (absent receipt of a notice that delivery was not completed) one business day following: (i) email transmission by HTDNET to you; (ii) deposit with a globally recognized overnight delivery service, all delivery charges pre-paid; or (iii) transmission if sent by facsimile and receipt confirmed by the facsimile machine used.

## **17. CONFIDENTIAL INFORMATION**

17.1. Confidential Information, including all HTDNET business and/or technical information, pricing, discounts and other information or data, whether in tangible or other form if marked or otherwise expressly identified in writing as confidential shall be considered privileged and not for release to others. Information communicated verbally will qualify as Confidential Information if designated as confidential or proprietary at the time of disclosure and summarized in writing within thirty (30) days after disclosure. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of you; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information without restriction on its dissemination or disclosure; (iii) was known by you prior to its receipt as "Confidential Information" and was not received from a third party in breach of that third party's confidentiality obligations; (iv) was independently developed by you without use of HTDNET's Confidential Information; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent so ordered, provided you make prompt written notification to HTDNET of the pending disclosure so that HTDNET may attempt to obtain a protective order. In the event of a potential disclosure in the case of subsection (v) above, you will provide reasonable assistance to HTDNET should HTDNET attempt to obtain a protective order. You will protect such Confidential Information received from HTDNET with no less care than the care you use to protect your own Confidential Information, but in no event, with no less than a reasonable degree of care. You will not use or disclose HTDNET's Confidential Information except as permitted in this section or for the express purpose of performing obligations under the Agreement. Your confidentiality obligations will survive the termination of the Agreement. Upon termination of the Agreement, you will cease all use of HTDNET's Confidential Information and will promptly and in a manner of transmittal reasonably expected to protect the confidentiality of such information, return or, at HTDNET's request, and in a manner of destruction reasonably expected to protect the confidentiality of such information, destroy all Confidential Information, including all copies, in whatever form in your possession or under your control, including such Confidential Information stored on any electronic medium or device of any sort. Upon request, you will certify in writing your compliance with this section.

17.2. During the performance of this Agreement, it may be necessary for HTDNET to transfer, process and store billing and utilization data and other data necessary for HTDNET's operation of its network and for the performance of its obligations under this Agreement. The transfer, processing and storing of such data may be to or from the United States. You hereby consent that you may, as permitted by applicable law, (i) transfer, store and process such data in the United States; and (ii) use such data to perform its obligations under this Agreement and/or its own network management purposes allowed by law.

## **18. OTHER**

18.1. Governing Law. This Agreement will be governed by the laws of the Commonwealth of Virginia and the laws of USA applicable therein, without reference to the conflict of laws provisions. The parties consent to the jurisdiction of the courts of Fauquier County, Virginia. Nothing in this Agreement will be construed to preclude either party from seeking provisional remedies, including but not limited to temporary restraining orders and preliminary injunctions, from any court of competent jurisdiction in order to protect its rights pending litigation.

18.2. Independent Contractors. The relationship between the parties is that of independent contractors, and not that of partnership, joint venture, employment, franchise or agency. Neither party may incur any obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

18.3. Force Majeure. Absent payment obligations, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control that could not have been avoided by the exercise of reasonable foresight provided that such party gives the other party prompt notice of such cause and uses reasonable commercial efforts to correct such failure or delay in performance.

18.4. Compliance with Laws. Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction.

18.5. No Third-party Beneficiaries. This Agreement is for the benefit of you and HTDNET and does not provide any third party the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

18.6. Time Limit. Actions on disputes between the parties must be brought within one (1) year after the cause of action arises. Both parties agree to waive any applicable statute of limitations.

18.7. Import/Export Laws. You shall not use, distribute, transfer or transmit any equipment, services, software or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

## **19. AMENDMENT**

19.1. HTDNET may change the TOS from time to time and at any time. When HTDNET materially changes the TOS, HTDNET will: (i) post the updated version of the TOS on the Site together with the date on which it was revised; and (ii) on home page for the Site for at least 30 days following any change to the TOS post a notice that the TOS have been updated.

19.2. HTDNET may, but is not obliged to, ask you to actively confirm your consent to the revised TOS. If HTDNET does not do so, but you continue to use the Services or Site after the changes come into effect, you will be deemed to have agreed to abide by the revised TOS. If you do not agree with the revised TOS without qualification, terminate any existing Services that you are receiving from HTDNET and instruct HTDNET to disable any password for the Site assigned to you.

19.3. HTDNET reserves the right, in its sole discretion, to change or modify the Site from time to time including but not limited adding or removing functionality or features or changing its name.

## **SCHEDULE A**

### **EQUIPMENT AND SOFTWARE TERMS**

1. ORDERS. As part of a Service, you may order HTDNET approved equipment ("Equipment") and software from HTDNET. HTDNET may make changes to Equipment or modify the drawings and specifications relating to Equipment, or substitute Equipment or software of later design, provided that the changes do not adversely and materially impact Equipment or software form, fit or function.

2. DELIVERY AND INSTALLATION. You must install the Equipment and software in accordance with any HTDNET-provided installation instructions.



3. RISK OF LOSS/TITLE. Risk of loss to the Equipment and software will pass to you when HTDNET delivers the Equipment or software to the carrier for shipment. Title to the Equipment shall not pass to you until you have fully paid HTDNET for the Equipment. Title to software provided under the Agreement will remain solely with HTDNET and its licensors.

4. CHARGES. The total cost for the Equipment and software and payment terms are identified in your Service Order form or Invoice, hereby incorporated by reference into the Agreement.

#### 5. EQUIPMENT AND SOFTWARE WARRANTY AND LIMITATIONS

5.1 HTDNET Equipment Warranty/Exclusions and Disclaimers. You recognize that HTDNET is a reseller and/or licensor of the Equipment and software ("Third Party Products"). HTDNET provides these Third Party Products on an "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, unless HTDNET specifies otherwise. However, such Third Party Products may carry their own warranties and HTDNET shall pass through to you any such warranties to the extent authorized. Exercise of such warranty shall be directly between you and the third-party provider. In general, HTDNET warrants that any Equipment and software will be consistent with market conditions and applicable law for similar high-quality communications service. If you claim that any Equipment or software is not in conformance with an applicable warranty, you must provide written notice describing in reasonable detail how the Equipment or software failed to be in conformance. You must also provide HTDNET with access to the remote site to enable HTDNET or its suppliers to repair the Equipment or software. HTDNET shall, at its option, repair or replace the non-conforming Equipment or software.

**"Third Party Products"** means any products made by a party other than HTDNET, and may include, without limitation, products ordered by you from third parties. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION, NEITHER HTDNET NOR ITS LICENSORS OR SUPPLIERS MAKES ANY EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE EQUIPMENT OR SOFTWARE. HTDNET DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF EQUIPMENT OR SOFTWARE OR THAT THE EQUIPMENT OR SOFTWARE WILL PREVENT TOLL FRAUD. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HTDNET DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES RELATED TO THE EQUIPMENT AND SOFTWARE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES EXPRESSLY REFERENCED HEREIN WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES RELATED TO THE EQUIPMENT AND SOFTWARE.