



285 Grand Street, Jersey City, NJ 07302

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This Agreement, the accompanying ticket, the corresponding Terms of Use and the related Price List(s) (collectively, the “Agreement”) sets forth the terms and conditions under which HiPer Networks, LLC, together with any of its affiliates and/or distribution partners (collectively, “HiPer Networks” or “we”), agrees to provide the Services described herein. The account holder(s) referred to on the accompanying HiPer Networks ticket or statement (“I,” “me,” “my,” “you,” or “your”) agrees that this Agreement sets forth the terms and conditions that govern my receipt of Services from HiPer Networks, which may include, among others, cable, high-speed data, local telephone, long distance and voice-over-internet-protocol telephone Services. By using the Service(s), you (i) agree to abide by, and require others using the Services via your account to abide by the terms of this Agreement, and (ii) represent and warrant that you are at least 18 years of age. If you do not agree with the foregoing, you may not use the Services and must return any installation software, equipment, and all associated materials to HiPer Networks. This Agreement takes effect on the date on which you accept this Agreement, and continues until your subscription is terminated.

HiPer Networks reserves the right to modify the terms of this Agreement and/or prices for the Services and may discontinue or revise any or all other aspects of the Services in its sole discretion at any time by posting changes online. An online version of this Agreement, as so changed from time to time, will be accessible at [www.HiPer.network](http://www.HiPer.network) or another online location designated by HiPer Networks, or can be obtained by calling your local HiPer Networks office. Your continued use of the Services after changes are posted constitutes your acceptance of this Agreement as modified by the posted changes. The updated, online version of this Agreement shall supersede any prior version of this Agreement that may have been included in any software or related materials provided by HiPer Networks.

HiPer Networks will provide notice of any significant change(s) in this Agreement. Any such changes shall become effective immediately except where applicable law requires a notice period, in which case the change will become effective at the end of the requisite notice period. Upon effectiveness of any change to any of these documents, your continued use of the Services will constitute your consent to such change and your agreement to be bound by the terms of the document as so changed. If you do not agree to any such change, you will cease using the Services and notify HiPer Networks that you are terminating your account.

In consideration of HiPer Networks’ provision of the Services that you have requested, subject to applicable law, **YOU AGREE AS FOLLOWS: IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MUST IMMEDIATELY STOP THE USE OF THE SERVICES AND NOTIFY THE HiPer NETWORKS CUSTOMER SERVICE DEPARTMENT SO THAT YOUR ACCOUNT MAY BE CLOSED.**

## 1. Definitions

- (a) “Agreement” means this Services Subscriber Agreement, as it may be amended from time to time by HiPer Networks, the accompanying ticket, the corresponding Terms of Use and the related Price List(s).
- (b) “Cable Service” means video and/or audio programming Services such as basic, standard, digital and premium Services, Services provided on a per-channel or per-program basis, pay-per-play, pay-per-view or VOD.
- (c) “Computer” means the personal computer(s) located at my residence that will be used to access the HSD Service, as specified on the accompanying ticket.
- (d) “Customer Equipment” means any equipment provided by me including, but not limited to, a phone handset or equivalent, phone inside wire and outlets, a powered electrical outlet, cable modems, voice-enabled cable modems, remote control units, multimedia terminal adapter (“MTA”) and any other equipment provided by me for use in connection with the Services under this Agreement.
- (e) “DVR” means a set-top box or other device enabled with a digital video recorder that is provided to me by HiPer Networks.
- (f) “HSD Service” and “High Speed Data Service” mean the online content, features, functions and Services (which may include Internet access) of the ISP or OLP selected by me, as provided over HiPer Network’s cable systems.
- (g) “Including” or “include” shall mean inclusion, without limitation.
- (h) “ISP” means the Internet service provider selected by me from among those offered now or in the future by HiPer Networks for the HSD Service.
- (i) “Local Telephone Service” and “Long Distance Telephone Service” are set forth in the HiPer Networks tariffs on file with the appropriate federal and/or state regulatory agencies. In the event a question arises requiring an interpretation of the terms of service in this Agreement, the provisions found in the tariff will take precedence.
- (j) “Me,” “My,” and “I” mean the account holder identified on the ticket who is authorized by HiPer Networks to access and use the Services.
- (k) “MTA” means multimedia terminal adapter.
- (l) “On-line Provider” or “OLP” means a provider of on-line content, features, functions and Services that are used in conjunction with my ISP Service (and whose service may be purchased with an ISP Service as part of a combined offering) but that does not itself provide Internet connectivity.
- (m) “Price List(s)” means the prices, as maintained pursuant to a pricing schedule that may be updated from time to time, for which HiPer Networks offers Service in my jurisdiction.
- (n) “Service” or “Services” means that service or those services provided to me by HiPer Network, which may include Cable Service, High Speed Data Service, Local Telephone Service, Long Distance Service, VoIP Service and equipment based Services such as digital video recorder Services.
- (o) “Software” means the computer software, if any, licensed by ISP or OLP to me to access the HSD Service, or licensed by HiPer Networks to me to facilitate installation or use of my ISP’s or OLP’s service or any other Services. Software also refers to any executable code that may be included in, downloaded to, or utilized by, any HiPer Networks Equipment.
- (p) “Subscriber Materials” means the handbooks, manuals and other guide materials provided by HiPer Networks or any third party (including my ISP or OLP) regarding use of the Services.
- (q) “Subscriber Privacy Notice” means the Subscriber Privacy Notice described in Section 13(a), as it may be amended from time to time by HiPer Networks.  
“Terms of Use” shall mean all rules, terms and conditions set forth in this Agreement or otherwise established now or hereafter by HiPer Networks regarding permissible or impermissible uses of or activities related to, the HSD Service.

(r) “HiPer Networks,” “HiPer Networks Parties” or “we” means HiPer Networks, LLC and any of its affiliates and subsidiaries and their respective directors, officers, employees and agents, as well as the local HiPer Networks-affiliated cable operator that is providing the Services over its cable system, or any person or entity to whom HiPer Networks assigns this Agreement.

(s) “HiPer Networks Equipment” means any equipment provided by HiPer Networks to me including, but not limited to, wire, cable, cable conduit, splitters, junction boxes, converter boxes (also known as “set top” boxes), decoders, terminals, cable modems, voice-enabled cable modems, remote control units, multimedia terminal adapter (“MTA”) and any other equipment or materials provided to me by HiPer Networks for use in connection with the receipt of Services.

(t) “VOD” means video on demand.

(u) “VoIP Service” means the provision of access to HiPer Networks’ Internet Protocol voice network and the public switched telephone network for the purpose of making and receiving local and/or long distance telephone calls and to access additional features and functions through HiPer Networks’ network.

(v) “ticket” means the HiPer Networks ticket provided to me in connection with the installation or commencement of my Service(s).

## **2. Important Information Concerning This Agreement**

(a) This Agreement, as it may be amended from time to time, constitutes the entire agreement between HiPer Networks and me. This Agreement supersedes all previous written or oral agreements between HiPer Networks and me. I am not entitled to rely on any oral or written statements by HiPer Networks’ representatives relating to the subjects covered by these documents, whether made prior to the date of my ticket or thereafter, and HiPer Networks will have no liability to me except in respect of its obligations as described in this Agreement and the other documents referred to above. The use of my Services by any person other than me is also subject to the terms of this Agreement.

(b) HiPer Networks has the right to add to, modify, or delete any term of this Agreement at any time. An online version of this Agreement, the Terms of Use, the Subscriber Privacy Notice and any applicable Price List(s), as so changed from time to time, will be accessible at [www.HiPer.network](http://www.HiPer.network) or another online location designated by HiPer Networks, or can be obtained by calling my local HiPer Networks office.

(c) HiPer Networks will notify me of any significant change(s) in this Agreement. Any such changes shall become effective immediately except where applicable law requires a notice period, in which case the change will become effective at the end of the requisite notice period. Upon effectiveness of any change to any of these documents, my continued use of the Services will constitute my consent to such change and my agreement to be bound by the terms of the document as so changed. If I do not agree to any such change, I will immediately stop using the Services and notify HiPer Networks that I am terminating my Services account.

(d) My acceptance of Services constitutes my acceptance of the terms and conditions contained in this Agreement. In the event that a portion of my Services is terminated, or any aspect of it is changed, any remaining service or replacement service will continue to be governed by this Agreement.

## **3. Payment; Charges**

(a) I agree to pay HiPer Networks for (i) all use of my Services (including, if HiPer Networks is the party billing me for ISP or OLP Service, for my subscription to my choice of ISP or OLP, as applicable), (ii) installation and applicable service charges, (iii) HiPer Networks Equipment, and (iv) all applicable local, state and federal fees and taxes. Charges for the Services are the sum of a base price as set forth on the applicable Price List(s) that I have received or have access to and a regulatory administration recovery charge in the amount of 2% of each base price applicable to the Services I use. I will be billed monthly in advance for recurring monthly charges. Other charges will be billed in the next practicable monthly billing cycle following use, or as otherwise specified in the applicable Price List(s). HiPer Networks may change both the fees and the types of charges (e.g., periodic, time-based, use-based) for my Services. If I participate in a promotional offer that requires a minimum time commitment and I terminate early, I agree that I am responsible for early termination fees associated with such promotion.

(b) If I receive VoIP Service, the fees and charges for VoIP Service begin to accrue on the

Billing Commencement Date. I understand that if HiPer Networks installs my MTA, the Billing Commencement Date is the day of installation. I understand that if I self-install an MTA that HiPer Networks has shipped to me, the Billing Commencement Date is the earlier of (i) the day I install the MTA or (ii) five (5) days after the shipment date. I understand that if I self-install an MTA that I obtained from a source other than HiPer Networks, the Billing Commencement Date is the day my order for Service is entered into HiPer Network's systems. The option to self-install an MTA and/or to use a non-HiPer Networks-supplied MTA is subject to availability.

(c) Charges for installation of Services and related equipment available from HiPer Networks for a standard Services installation are as described in the applicable Price List(s). Non-standard installations, if available, may result in additional charges as described in the applicable Price List(s). In addition, I agree to pay charges for repair service calls resulting from my misuse of HiPer Networks Equipment or for failures in equipment not supplied by HiPer Networks.

(d) If my Services account is past due and HiPer Networks sends a collector to my premises, a field collection fee may be charged. The current field collection fee is on the price list or can be provided on request. I will also be responsible for all other expenses (including reasonable attorneys' fees and costs) incurred by HiPer Networks in collecting any amounts due under this Agreement and not paid by me.

(e) All charges are payable on the due date specified, or as otherwise indicated, on my bill. I agree that late charges may be assessed, subject to applicable law, on amounts that are past due. My failure to deliver payment by the due date is a breach of this Agreement. The current late fees are on the price list or can be provided upon request and, if applicable, will not exceed the maximum late fees as set forth by applicable law. HiPer Networks reserves the right to change the late fees.

(f) I agree that if my Services account with HiPer Networks is past due, HiPer Networks may terminate any of my Services or accounts, including VoIP Service, in accordance with applicable law. If I have a credit due to me or a deposit is being held on any account with HiPer Networks, I agree that the credit or deposit may be used to offset amounts past due on any other account I may have with HiPer Networks without notice to me. To reconnect any terminated Services, I may be required, in addition to payment of all outstanding balances on all accounts with HiPer Networks, to pay reconnect charges or trip charges (where applicable) and/or security deposits before reconnection.

(g) HiPer Networks may verify my credit standing with credit reporting agencies and require a deposit based on my credit standing or other applicable criteria. HiPer Networks may require a security deposit, or a bank or credit card or account debit authorization from me as a condition of providing or continuing to provide Services. If HiPer Networks requires a security deposit, the obligations of HiPer Networks regarding such security deposit will be governed by the terms of the deposit receipt provided by HiPer Networks to me at the time the deposit is collected. I agree that HiPer Networks may deduct amounts from my security deposit, bill any bank or credit card submitted by me, or utilize any other means of payment available to HiPer Networks, for any past due amounts payable by me to HiPer Networks, including in respect of damaged or unreturned Equipment.

(h) If I have elected to be billed by credit card, debit card or ACH transfer, I agree that I will automatically be billed each month for any amounts due under this Agreement. If I make payment by check, I authorize HiPer Networks and its agents to collect this item electronically.

(i) HiPer Networks may charge fees for all returned checks and account debit, bank card or charge card charge-backs. The current return/charge-back fees are listed in the list of charges on the applicable Price List(s) or can be provided on request. HiPer Networks reserves the right to change return/charge-back fees.

(j) If I subscribe to HSD Service, I acknowledge that, even if HiPer Networks is billing for the HSD Service, my ISP or OLP may require a bank or credit card or account debit authorization or other assurance of payment from me, including for charges for additional or continuing Services outside the HSD Service billed by HiPer Networks that are payable under the ISP Terms. I agree that HiPer Networks or ISP (and, if applicable, OLP) may bill any bank or credit card submitted by me to ISP or OLP, or utilize any other means of payment available to ISP or OLP for any past due amounts payable by me to HiPer Networks. I also agree that responsibility for billing for my HSD Service subscription may be changed between HiPer Networks and ISP or

OLP upon notice to me.

(k) All use of my Services, whether or not authorized by me, will be deemed my use and I will be responsible in all respects for all such use, including for payment of all charges attributable to my account (e.g., for VOD movies, merchandise ordered via Internet, international long distance charges, etc.). HiPer Networks is entitled to assume that any communications made through my Services or from the location at which I receive the Services are my communications or have been authorized by me. I am legally responsible for all costs and charges associated with communications made through my Services or from the location at which I receive the Services whether made by me or a third party. My Services may contain or make available information, content, merchandise, products and Services provided by third parties and for which there may be charges payable to third parties (which may include my choice of ISP or OLP and/or entities affiliated with HiPer Networks). I agree that all such charges incurred by me or attributed to my account will be my sole and exclusive responsibility and agree to pay the same when due, and shall indemnify and hold harmless the HiPer Networks Parties for all liability for such charges. I agree that HiPer Networks is not responsible or liable for the quality of any content, merchandise, products or Services (or the price thereof) made available to me via the Services, for the representations or warranties made by the seller or manufacturer of any such item, or for damage to or injury, if any, resulting from the use of such item.

(l) I acknowledge that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services HiPer Networks provides and, consequently, uncertainty about what fees, taxes and surcharges are due from HiPer Networks and/or its customers. Accordingly, I agree that HiPer Networks has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to me. I further agree to waive any claims I may have regarding HiPer Networks' collection or remittance of such fees, taxes and surcharges. I further understand that I may obtain a list of the fees, taxes and surcharges that my local HiPer Networks office currently collects or passes through by writing to HiPer Networks at the following address and requesting same: HiPer Networks, 285 Grand Street, Jersey City, NJ 07302; Attention: Legal Department.

(m) I agree that it is my responsibility to report HiPer Networks billing errors within 30 days from receipt of the bill so that service levels and all payments can be verified. If not reported within 30 days, I agree that the errors are waived.

#### **4. Installation; Equipment and Cabling**

(a) If I am not the owner of the house, apartment or other premises upon which HiPer Networks Equipment and Software are to be installed, I warrant that I have obtained the consent of the owner of the premises for HiPer Networks personnel and/or its agents to enter the premises for the purposes described in Section 4(d). I agree to indemnify and hold the HiPer Networks Parties harmless from and against any claims of the owner of the premises arising out of the performance of this Agreement (including costs and reasonable attorneys' fees).

(b) I authorize HiPer Networks to make any preparations to the premises necessary for the installation, maintenance, or removal of equipment. HiPer Networks shall not be liable for any effects of normal Services installation and workmanship, such as holes in walls, etc., which may remain after installation or removal of the HiPer Networks Equipment, except for damage caused by the gross negligence or willful misconduct on the part of HiPer Networks.

(c) The HiPer Networks Equipment is and at all times shall remain the sole and exclusive personal property of HiPer Networks, and I agree that I do not become an owner of any HiPer Networks Equipment by virtue of the payments provided for in this Agreement or the attachment of any portion of the HiPer Networks Equipment to my residence or otherwise. Upon termination of any Services, subject to any applicable laws or regulations, HiPer Networks may, but shall not be obligated to, retrieve any associated HiPer Networks Equipment not returned by me as required under Section 4(f) below. HiPer Networks will not be deemed to have "abandoned" the HiPer Networks Equipment if it does not retrieve such equipment.

(d) I agree to provide HiPer Networks and its authorized agents access to my premises during regular business hours upon reasonable notice during the term of this Agreement and after its termination to install, connect, inspect, maintain, repair, replace, alter or disconnect or remove the HiPer Networks Equipment, to install Software, to conduct service theft audits, or to check for

signal leakage. I agree that HiPer Networks may have reasonable access to easements and HiPer Networks Equipment located on my grounds.

(e) HiPer Networks shall have the right to upgrade, modify and enhance HiPer Networks Equipment and Software from time to time through “downloads” from HiPer Networks’ network or otherwise. Without limiting the foregoing, HiPer Networks may, at any time, employ such means to limit or increase the throughput available through individual cable modems whether or not provided by HiPer Networks.

(f) If the Services are terminated, I agree that I have no right to possess or use the HiPer Networks Equipment related to the terminated Services. I agree that I must arrange for the return of HiPer Networks Equipment to HiPer Networks, in the same condition as when received (excepting ordinary wear and tear), upon termination of the Services. If I do not promptly return the HiPer Networks Equipment or schedule with HiPer Networks for its disconnection and removal, HiPer Networks may enter any premises where the HiPer Networks Equipment may be located for the purpose of disconnecting and retrieving the HiPer Networks Equipment. I will pay any expense incurred by HiPer Networks in any retrieval of the unreturned HiPer Networks Equipment. HiPer Networks may charge me a continuing monthly fee until any outstanding HiPer Networks Equipment is returned, collected by HiPer Networks or fully paid for by me in accordance with Section 4(g). The current fee is listed in the list of charges on the price list or can be provided on request. I agree to pay HiPer Networks liquidated damages in the amount demanded by HiPer Networks, but not to exceed that specified in the then-current Price List, for the replacement cost of the HiPer Networks Equipment without any deduction for depreciation, wear and tear or physical condition of such HiPer Networks Equipment if (i) I tamper with, or permit others to tamper with, HiPer Networks Equipment, (ii) the HiPer Networks Equipment is destroyed, lost, or stolen, whether or not due to circumstances beyond my reasonable control, and even if I exercised due care to prevent such destruction, loss, or theft, or (iii) the HiPer Networks Equipment is damaged (excluding equipment malfunction through no fault of my own) while in my possession, whether or not due to circumstances beyond my reasonable control, and even if I exercised due care to prevent such damage. I agree that these liquidated damages are reasonable in light of the problem of theft of cable Services; the ability of third parties to steal Services with unlawfully obtained HiPer Networks Equipment, causing loss of revenues for installation and service fees; and the difficulty in determining the actual damages that arise from the unauthorized tampering with, loss, destruction, or theft of HiPer Networks Equipment. I agree to return any damaged HiPer Networks Equipment to HiPer Networks.

(h) I agree that HiPer Networks may place equipment and cables on my premises to facilitate the provision of Services to me and to other locations in my area. The license granted under this Section will survive the termination of this Agreement until the date that is one year from the date on which I first notify HiPer Networks in writing that I am revoking such license.

(i) In order to use the VoIP Service, I understand I am required to provide certain equipment such as a phone handset or equivalent, phone inside wire and outlets, and a powered electrical outlet. I understand I may wish to provide a cordless phone if I live in an apartment or a similar multi-tenant dwelling. If HiPer Networks cannot get access to my inside phone wiring, I understand that I will need a cordless phone to use HiPer Networks’ Services throughout my dwelling. To use the VoIP Service, I understand I will also need an MTA certified by HiPer Networks. I understand that I can lease an MTA from HiPer Networks, in which case it will be HiPer Networks Equipment (as defined below). Or, in some areas, I understand that HiPer Networks may permit me to use the Services with an MTA which I have purchased, in which case the MTA will be Customer Equipment. Depending on availability in my area, I understand I may have an option to install the MTA myself (“self-installation”) or to have HiPer Networks install it for me. HiPer Networks HiPer Networks HiPer Networks some HiPer Networks HiPer Networks

(j) I represent that I either own the Customer Equipment or have the right to use that equipment in connection with the Services. HiPer Networks shall have no obligation to provide, maintain, or service the Customer Equipment (including but not limited to any MTA that I have purchased). The requirements may be revised by HiPer Networks from time to time. I acknowledge that if I install or use in connection with the Services Customer Equipment that does not meet the minimum technical or other requirements described above (a “Non-Recommended Configuration”), I agree (i) that I will not be entitled to customer support relating to any issues other than the quality of the signal delivered to the MTA, and (ii) that the following limitation of liability shall apply: NEITHER HiPer NETWORKS NOR ANY OF ITS AFFILIATES OR AGENTS WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE

ME TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICES. I ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT. NEITHER HiPer NETWORKS NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement.

(k) HiPer Networks Equipment will at all times remain the property of HiPer Networks or its designee. I acknowledge that HiPer Networks Equipment is merely a means for HiPer Networks to provide me the Services and that HiPer Networks may remove or change it at its discretion. I acknowledge that I am not to use HiPer Networks Equipment for any purpose other than to use the Services in accordance with this Agreement. HiPer Networks will repair and maintain all HiPer Networks Equipment during the term of this Agreement. I acknowledge that I will not allow the HiPer Networks Equipment to be serviced by anyone other than HiPer Networks employees or agents. I acknowledge that I will not sell, transfer, lease, encumber, or assign all or any part of the HiPer Networks Equipment to any third party. If any HiPer Networks Equipment or part thereof is lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered, or assigned, I agree to pay HiPer Networks the full manufacturer's suggested retail price for its replacement, together with any incidental costs that we incur relating to its replacement. I acknowledge that I will not relocate HiPer Networks Equipment to any other location. At my request, HiPer Networks may relocate the HiPer Networks Equipment within the Premises for an additional charge, at a time agreeable to me and to HiPer Networks. If I change residences, I understand that I must contact HiPer Networks for information on whether the HiPer Networks Equipment and Services can be transferred to my new residence and what the relocation will cost. If I wish to disconnect the Services, I understand I must contact HiPer Networks for information on the necessary procedures and cost.

## **5. Use of Services; HiPer Networks Equipment and Software**

(a) I agree that HiPer Networks has the right to add to, modify, or delete any aspect, feature or requirement of the Services (including content, price, equipment and system requirements). I further agree that my ISP (and, if applicable, OLP) has the right to add to, modify, or delete any aspect, feature or requirement of the HSD Service (including content, price and system requirements). If HiPer Networks changes its equipment requirements with respect to any Services, I acknowledge that I may not be able to receive such Services utilizing my then-current equipment. Upon any such change, my continued use of Services will constitute my consent to such change and my agreement to continue to receive the relevant Services, as so changed, pursuant to this Agreement. If I participate in a promotional offer for any Service(s) that covers a specified period of time, I agree that I am assured only that I will be charged the promotional price for such Service(s) during the time specified. I agree that HiPer Networks shall have the right to add to, modify, or delete any aspect, feature or requirement of the relevant Service(s), other than the price I am charged, during such promotional period.

(b) I agree that the Services I have requested are residential Services, offered for reasonable personal, non-commercial use only. I will not resell or redistribute (whether for a fee or otherwise) the Services, or any portion thereof, or charge others to use the Services, or any portion thereof. Among other things:

(c) If I receive Cable Service, I agree not to use the Services for the redistribution or retransmission of programming or for any enterprise purpose whether or not the enterprise is directed toward making a profit. I agree that, among other things, my use of the Services to transmit or distribute the Cable Service, or any portion thereof, to (or to provide or permit access by) persons outside the location identified in the ticket (even if to a limited group of people or to other residences that I own or have the right to use), will constitute an enterprise purpose. I acknowledge that programs and other materials that I receive as part of the Cable Service remain part of the Cable Service even if I record or capture all or a portion of any such program or material in a data file or on a hard drive, DVR or similar device.

(d) If I receive Local Telephone Service, Long Distance Telephone Service or VoIP Service, I agree not to use the Services for telemarketing, call center, medical transcription or facsimile broadcasting Services or for any enterprise purpose whether or not the enterprise is directed toward making a profit. I agree that, among other things, my use of the Services to make available my VoIP Service, or any portion thereof, to (or to provide or permit access by) persons outside the

location identified in the ticket (even if to a limited group of people or to other residences that I own or have the right to use), will constitute an enterprise purpose. Also, I understand that I assume the risk of high-risk activities. I understand that VoIP Services are not represented as fail-safe. I understand they are not designed for use in situations where error-free or uninterrupted service is essential. I acknowledge that I expressly assume the risk of any damages from high-risk activities involving vital communications in which an error or interruption in the Services could lead to material injury to business, persons, property, or the environment. I acknowledge that I will not service, alter, modify, or tamper with HiPer Networks Equipment or with the VoIP Service, or permit any other person (not expressly authorized by HiPer Networks) to do so. I agree that the MTA and VoIP Service will only be used at my service address appearing in HiPer Networks' records. I understand and acknowledge that if I attempt to install or use the HiPer Networks Equipment or VoIP Service at another location, the VoIP Service, including but not limited to 911/E911, may fail to function or may function improperly. I understand and acknowledge that if I move the MTA or VoIP Service to another location without complying with Section 4(k), I will be doing so in violation of this Agreement and at my own risk. If I understand that if I violate any of the restrictions in Section 5(b), HiPer Networks reserves the right to terminate VoIP Service immediately and without notice, leaving me responsible for all outstanding charges, which immediately become due and payable.

(iii) VoIP Service and HiPer Networks Equipment, including any firmware or software embedded in the HiPer Networks Equipment or used to provide the VoIP Service, are protected by trademark, copyright, and/or other intellectual property laws and international treaty provisions. I understand that I am granted a revocable license to use such firmware and software in object code form (without making any modification thereto) strictly in accordance with this Agreement. I acknowledge and understand that I am not granted any other license to use the firmware or software embedded in the HiPer Networks Equipment or used to provide the VoIP Service. I expressly agree that I will use the HiPer Networks Equipment exclusively in connection with the VoIP Service. I acknowledge that I shall not reverse compile, disassemble, or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software. If I decide to use VoIP Service through an interface device not provided by HiPer Networks, which HiPer Networks reserves the right to prohibit in particular cases or generally, I warrant and represent that I possess all required rights to use that interface device with the VoIP Service, including all software and firmware licenses. I acknowledge that I will indemnify and hold harmless HiPer Networks against any and all liability arising out of my use of such interface device with the VoIP Service.

(iv) If I receive HSD Service, I agree not to use the HSD Service for operation as an Internet service provider, for the hosting of websites (other than as expressly permitted as part of the HSD Service) or for any enterprise purpose whether or not the enterprise is directed toward making a profit. I agree that, among other things, my use of any form of transmitter or wide area network that enables persons or entities outside the location identified in the ticket to use my Services, whether or not a fee is sought, will constitute an enterprise purpose. Furthermore, if I use a wireless network within my residence, I will limit wireless access to the HSD Service (by establishing and using a secure password or similar means) to the members of my household.

(c) Theft or willful damage, alteration, or destruction of HiPer Networks Equipment, or unauthorized reception, theft or diversion of Services, or assisting such theft, diversion, or unauthorized reception is a breach of this Agreement and potentially punishable under law (including by way of statutory damages, fine and/or imprisonment). Nothing in this Agreement, including, Section 4(g) above, shall prevent HiPer Networks from enforcing any rights it has with respect to theft or unauthorized tampering of Services or HiPer Networks Equipment under applicable law.

(d) I will not, nor will I allow others to, open, alter, misuse, tamper with or remove the HiPer Networks Equipment as and where installed by HiPer Networks or use it contrary to this Agreement. I will not, nor will I allow others to, remove any markings or labels from the HiPer Networks Equipment indicating HiPer Networks ownership or serial or identity numbers. I will safeguard the HiPer Networks Equipment from loss or damage of any kind, including accidents, breakage or house fire, and will not permit anyone other than an authorized representative of HiPer Networks to perform any work on the HiPer Networks Equipment.

(e) I agree that to the extent any Software is licensed (or sublicensed) to me by HiPer Networks, such Software is provided for the limited purpose of facilitating my use of the Services as described in this Agreement. I will not engage in, or permit, any additional copying, or any



translation, reverse engineering or reverse compiling, disassembly or modification of or preparation of any derivative works based on the Software, all of which are prohibited. I will return or destroy all Software provided by HiPer Networks and any related written materials promptly upon termination of the associated Services to me for any reason. Software licensed to me by my ISP or OLP, for instance my ISP's or OLP's client or browser software, is licensed under the ISP Terms or OLP Terms, as applicable, and is not the responsibility of HiPer Networks.

(f) I agree that I will use the Services for lawful purposes only, and in accordance with this Agreement.

(g) I agree to be responsible for protecting the confidentiality of my screen names, passwords, personal identification numbers (PINs), parental control passwords or codes, and any other security measures made available, recommended or required by HiPer Networks. I also acknowledge that HiPer Networks' Services may from time to time include interactive features, the use of which may result in the transmission to, and use by, HiPer Networks or certain third parties of information that may constitute personally identifiable information (as such term is used in the Communications Act of 1934) about me and for which HiPer Networks may be required, under the Communications Act of 1934, to obtain my consent. I agree that HiPer Networks may seek such consents (or indications of my election to "opt in" to certain HiPer Networks programs) electronically, including through the use of a "click through" screen.

Any such consent or opt in election communicated through my Services or from the location at which I receive the Services may be treated by HiPer Networks as my consent or opt in election for the use of personally identifiable information.

(h) I agree that HiPer Networks has no liability for the completeness, accuracy or truth of the programs or information it transmits.

## 6. Special Provisions Regarding VoIP Service

(a) **CAREFULLY READ THE INFORMATION BELOW. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS OF 911/E911. YOU AGREE TO ADVISE ALL PERSONS WHO MAY HAVE OCCASION TO PLACE CALLS OVER VoIP SERVICE OF THESE LIMITATIONS.**

(b) VoIP Service includes 911/Enhanced 911 dialing ("911/E911") that may differ from the 911 or Enhanced 911 dialing furnished by other providers. As such, it may have certain limitations.

(c) I acknowledge that the voice-enabled cable modem used to provide VoIP Service is electrically powered and that the VoIP Service, including the ability to access 911 Services and home security and medical monitoring Services, may not operate in the event of an electrical power outage or if my broadband cable connection is disrupted or not operating. I acknowledge that, in the event of a power outage in my home, any battery included in my voice-enabled cable modem may enable back-up service for a limited period of time or not at all, depending on the circumstances, and that inclusion of the battery does not ensure that VoIP Service will be available in all circumstances, and that performance of any battery is not guaranteed. I also acknowledge that, in the event of a loss of power that disrupts my local HiPer Networks cable system, the battery in my voice-enabled cable modem will not provide back-up service and VoIP Service will not be available. I acknowledge and understand that my MTA may not have battery backup or another power source of its own.

(d) I agree that HiPer Networks will not be responsible for any losses or damages arising as a result of the unavailability of the VoIP Service, including the inability to reach 911 or other emergency Services, or the inability to contact my home security system or remote medical monitoring service provider. I acknowledge that HiPer Networks does not guarantee that VoIP Service will operate with my home security and/or medical monitoring systems, and that I must contact my home security or medical monitoring provider in order to test my system's operation with the VoIP Service. I agree that I am responsible for the cost of any such testing or any fees for configuring my home security or medical monitoring system to work with the VoIP Service.

(e) The location and address associated with my VoIP Service will be the address identified on the ticket. I acknowledge that, under Section 4(k) and 5(d) of this Agreement, I am not permitted to move HiPer Networks Equipment from the location at the address in which it has been installed. Furthermore, if I move my voice-enabled cable modem to an address different than that identified on the ticket, calls from such modem to 911 will appear to 911 emergency service operators to be coming from the address identified on the ticket and not the new address.

(f) I acknowledge that the existing telephone wiring inside my home may not support both VoIP Service and digital subscriber line (DSL) service. Therefore, if I intend to use VoIP Service on all of my phone jacks, I may be required to maintain separate wiring, not provided by HiPer Networks, within my home specifically for DSL service or to disconnect my DSL service prior to receiving VoIP Service over my existing in-home wiring.

(g) I agree to provide HiPer Networks and its authorized agents with access to my telephone inside wiring at the Network Interface Device or at some other minimum point of entry in order to provide Local Telephone Service, Long Distance Telephone Service or VoIP Service over my existing in-home wiring.

(h) I acknowledge that VoIP Service may not be compatible with certain data transmission Services, including but not limited to fax transmissions and dial-up Internet access and that I may be required to maintain a separate telephone line, not provided by HiPer Networks, in order to access such Services.

(i) For 911/E911 to work in accordance with HiPer Networks' specifications, I understand that HiPer Networks must have a correct service address for the location of my MTA. I understand that if I do not provide the correct address when I register for VoIP Service or if I relocate my MTA to a new address and do not register the new address with HiPer Networks, 911/E911 may fail in two ways: (i) 911/E911 calls may be misdirected to the wrong emergency authorities, and (ii) emergency authorities will be given the wrong address for the origin of my E911 calls. If I wish to relocate the MTA and continue to use VoIP Service including 911/E911, I understand that I must comply with Sections 4(k), seek authorization for VoIP Service at my new service address (if available), and update my service address with HiPer Networks. I understand 911/E911 may not function if VoIP Service are interrupted for any reason, including but not limited to failure of my MTA, incorrect configuration of my MTA, a power outage, failure of our network or facilities, or suspension or disconnection of my services because of nonpayment.

**(j) I ACKNOWLEDGE AND UNDERSTAND THAT HiPer NETWORKS WILL NOT BE LIABLE FOR ANY VoIP SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE VoIP SERVICE, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL DUE TO THE 911/ E911 FEATURE OR LIMITATIONS SET FORTH IN THIS AGREEMENT. I AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS HiPer NETWORKS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AND AGENTS, AND ANY OTHER PROVIDER WHO FURNISHES SERVICES TO ME IN CONNECTION WITH THE VoIP SERVICE, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, ME OR ANY THIRD PARTY OR USER OF VoIP SERVICE RELATING TO THE FAILURE, OUTAGE OR MALFUNCTION OF THE VoIP SERVICE, INCLUDING THOSE RELATED TO 911/E911 OR THE FAILURE, OUTAGE OR MALFUNCTION OF THE HiPer NETWORKS EQUIPMENT OR FACILITIES.**

## 7. Special Provisions Regarding HSD Service

(a) I acknowledge that the HSD Service is offered on a tiered basis and that each tier has "throughput" limits (i.e., limits on the maximum rate at which I may send and receive data at any time), "consumption" limits (i.e., limits on the amount of data that I may send or receive during the course of a month or over shorter periods) and other similar limits, all as set forth in the price list or the Terms of Use. I agree that HiPer Networks or ISP may change the throughput, consumption and other applicable limits of any tier(s) by amending the price list or Terms of Use. My continued use of the HSD Service will constitute my acceptance of any new limits. I also agree that HiPer Networks may use technical means, including but not limited to suspending or

reducing the speed of my service, to ensure compliance with these limits and the Terms of Use, and that HiPer Networks or ISP may move me to a higher tier of HSD service (which may result in higher monthly charges) or impose other charges and fees if my use exceeds these limits. I further agree that HiPer Networks and ISP have the right to monitor my usage patterns to facilitate the provision of the HSD Service and to ensure my compliance with the Terms of Use. HiPer Networks or ISP may take such steps as it determines appropriate in the event my usage of the HSD Service does not comply with the Terms of Use, including applicable consumption limits.

(b) Republication.

(i) I acknowledge that material posted or transmitted through the HSD Service may be copied, republished or distributed by third parties, and that the HiPer Networks Parties will not be responsible for any harm resulting from such actions.

(ii) I grant to HiPer Networks, and I represent, warrant and covenant that I have all necessary rights to so grant, the non-exclusive, worldwide, royalty-free, perpetual, irrevocable, right and license to use, reproduce, modify, adapt, publish, translate, distribute, perform and display in any media all material posted on the public areas of the HSD Service via my account and/or to incorporate the same in other works, but only for purposes consistent with operation and promotion of the HSD Service.

(iii) I agree that unsolicited email, or “spam,” is a nuisance and that HiPer Networks and my ISP (and, if applicable, my OLP) are entitled to establish limits on the volume of email that I send. Such volume limits may be set by reference to a number of emails per day, week, month or year.

(c) I acknowledge that the ISP Service provides a connection to the Internet that may be unfiltered, and that the HiPer Networks Parties neither control nor assume responsibility for any content on the Internet or content that is posted by a subscriber. Although HiPer Networks or my ISP or OLP may make available certain parental control features, I acknowledge that such parental control features may not be entirely effective or foolproof and that, notwithstanding such features, I or members of my household may be exposed to unfiltered content.

(d) I agree that HiPer Networks and/or my ISP and/or OLP has the right, but not the obligation, to edit, refuse to post or transmit, request removal of, or remove or block any material transmitted through, submitted to or posted on the HSD Service, if it determines in its discretion that the material is unacceptable or violates the terms of this Agreement, any HiPer Networks consumption limits or any other Terms of Use. Such material might include personal home pages and links to other sites. In addition, I agree that, under such circumstances, HiPer Networks may suspend my account, take other action to prevent me from utilizing certain account privileges (e.g., home pages) or cancel my account without prior notification. I also agree that HiPer Networks and/ or ISP and/or OLP may suspend or cancel my account for using all or part of the HSD Service to post content to the Internet or to engage in “peer to peer” file exchanges or other forms of file exchanges that violate this Agreement or the Terms of Use.

(e) Each of HiPer Networks and my ISP (and, if applicable, my OLP) has responsibilities for the HSD Service. I acknowledge that each of my ISP and OLP may have one or more separate agreements, policies or other terms covering my rights and obligations with regard to the HSD Service (“ISP Terms” or “OLP Terms,” as applicable) that are also binding on me. This Agreement does not cover any ISP or OLP features or Services that are not dependent upon distribution over HiPer Networks’ cable systems (for example, dial up access or my use of ISP or OLP software that enables access to ISP or OLP features or Services through non-HiPer Networks access means) or that may otherwise be provided to me by ISP or OLP separately from the HSD Service under the ISP Terms or OLP Terms, as applicable. In the event of termination of the HSD Service, I must also contact my ISP (and, if applicable, my OLP) to ensure that these other features or Services (such as dial-up access) are properly continued or discontinued.

(f) I agree that each Computer will need to meet certain minimum hardware and software requirements that will be specified for the HSD Service, and that such requirements may be changed from time to time by HiPer Networks or my ISP or OLP.

## **8. Support; Service and Repairs**

(a) My Services include the right to request reasonable service and maintenance calls to

check and correct problems with the Services. HiPer Networks will, at its own expense, repair damage to or, at HiPer Networks' option, replace HiPer Networks Equipment, and otherwise attempt to correct interruptions of the Services, due to reasonable HiPer Networks Equipment wear and tear, or technical malfunction of the system or network operated by HiPer Networks. The Subscriber Materials contain details on contacting HiPer Networks for this support.

(b) I agree that I am responsible for all wiring, equipment and related software installed in my residence that is not HiPer Networks Equipment or HiPer Networks -licensed Software and HiPer Networks will have no obligation to install, connect, support, maintain, repair or replace any Computer, television, telephone or telephone answering device, audiovisual recording or playback device (e.g., VCR, DVR, DVD), audio equipment, any software, or any cable modem, cabling or other equipment (other than HiPer Networks Equipment or HiPer Networks -licensed Software). HiPer Networks will not support, repair, replace, or maintain any Network Interface Card, regardless of whether provided and installed by HiPer Networks.

(c) I agree that HiPer Networks has no responsibility for the operation of any equipment, software or service other than the Services, the HiPer Networks Equipment and the HiPer Networks-licensed Software. For instance, I acknowledge that certain commercially available televisions, converter boxes and recording devices, which may be identified by their manufacturers as "cable ready" or "digital cable ready," may not be able to receive or utilize all available Services without the addition of a HiPer Networks converter box or other HiPer Networks Equipment for which a fee may be charged. If I receive HSD Service, HiPer Networks has no responsibility to support, maintain or repair any equipment, software or service that I elect to use in connection with the HSD Service, whether provided by my ISP, my OLP or a third party. For assistance with technical problems arising from such equipment, software or Services, I should refer to the Subscriber Materials for information regarding the technical support provided by my ISP or OLP or to the support area of the ISP or OLP or to the relevant third party's material.

(d) If HiPer Networks determines that non- HiPer Networks cabling or equipment connecting my residence to HiPer Networks Equipment installed on the side of or adjacent to my residence (i.e., at a ground block) is the cause of a service problem, I agree that HiPer Networks may charge me to resolve such service problem. If available from HiPer Networks in my area, I may subscribe to a HiPer Networks service protection plan that covers service related calls within my residence. If any other support Services are available from HiPer Networks, such Services will be at additional charges as described in HiPer Networks' price list.

## **9. Service Interruptions; Force Majeure**

(a) I agree that HiPer Networks has no liability for delays in or interruption to my Services, except that if for reasons within HiPer Networks' reasonable control, for more than twenty-four (24) consecutive hours, (i) service on all cable channels is interrupted, (ii) there is a complete failure of the HSD Service or (iii) there is a complete failure of the VoIP Service, HiPer Networks will give me a prorated credit for the period of such interruption or failure if I request one within 30 days of the interruption or failure. Notwithstanding the above, HiPer Networks will issue credits for VOD, pay-per-view and pay-per-play events for service problems where a credit request is made within 30 days of the interruption or failure. In no event shall HiPer Networks be required to credit me an amount in excess of applicable service fees. HiPer Networks will make any such credit on the next practicable bill for my Services. State and local law or regulation may impose other outage credit requirements with respect to some or all of my Services. In such event, the relevant law or regulation will control.

(b) I acknowledge that HiPer Networks may conduct maintenance from time to time that may result in interruptions of my Services.

(c) The HiPer Networks Parties shall have no liability, except for the credit as set forth in Section 9(a), for interruption of the Services due to circumstances beyond its reasonable control, including acts of God, flood, natural disaster, vandalism, terrorism, regulation or governmental acts, fire, civil disturbance, electrical power outage, computer viruses or worms, strike or weather.

(d) HiPer Networks is only obligated to provide the above-referenced credits for loss of HSD Service if HiPer Networks is billing me for the HSD Service at the time of the outage. If my ISP or OLP is billing me, I will look solely to my ISP or OLP, as applicable, for a credit with respect to the HSD Service.

## 10. Review and Enforcement

- (a) HiPer Networks may suspend or terminate all or a portion of my Services without prior notification if HiPer Networks determines in its discretion that I have violated this Agreement or any of the Terms of Use, even if the violation was a one-time event. If all or a portion of my Services are suspended, I will not be charged for the relevant Services during the suspension. If my account is terminated, I will be refunded any pre-paid fees minus any amounts due HiPer Networks.
- (b) If I receive HSD Service, I acknowledge that HiPer Networks has the right, but not the obligation, to review content on public areas of the HSD Service, including chat rooms, bulletin boards and forums, in order to determine compliance with this Agreement and the Terms of Use.
- (c) I agree that HiPer Networks shall have the right to take any action that HiPer Networks deems appropriate to protect the Services, HiPer Networks's facilities or HiPer Networks Equipment.

## 11. Term; Termination of Service

- (a) This Agreement will remain in effect until terminated by either party or superseded by a revised Subscription Agreement.
- (b) Either HiPer Networks or I may terminate all or any portion of my Services at any time for any or no reason, in its sole discretion, in accordance with applicable law and the terms of any marketing offer(s) specified in this Agreement.
- (c) If I am moving or wish to terminate all or any portion of my Services for any reason, I will notify HiPer Networks by phone, by mail, or electronically as instructed in the Subscriber Materials in order to set up a disconnect appointment and provide HiPer Networks with access to my premises to disconnect the relevant Services and recover the HiPer Networks Equipment specified on the ticket on a DATE PRIOR TO the last day of residency. This also applies if I am receiving a period of free or discounted Services. In other words, at the end of the free or discounted period, HiPer Networks is entitled to begin billing me for the usual charges associated with the relevant Services unless I take the appropriate steps to terminate the Services as described in this paragraph. If I wish to transfer my phone number to another provider, I will follow the procedures in Section 17. All applicable fees and charges will accrue until the date of termination, but HiPer Networks will refund all prepaid monthly service fees charged for Services after the date of termination (less any outstanding amounts due HiPer Networks for the Services, affiliate services, equipment, or other applicable fees and charges).
- (d) I cannot terminate my Services by writing "Canceled" (or any other messages) on my bill or check, or by making a disconnect appointment that does not result in HiPer Networks' physical recovery of the HiPer Networks Equipment. In addition, I agree that any restrictive endorsements (such as "paid in full"), releases or other statements on or accompanying checks or other payments accepted by HiPer Networks shall have no legal effect.  
If I subscribe to HSD Service, I acknowledge that notice given by me to HiPer Networks of termination of my HSD Service may not be sufficient to terminate billing by my ISP or OLP for additional or continuing Services under the ISP Terms or OLP Terms (for example, "dial up" access). I agree that I am solely responsible for contacting my ISP or OLP in addition to HiPer Networks to ensure that all such Services are terminated in accordance with the ISP Terms or OLP Terms, as applicable.
- (f) HiPer Networks may suspend Service or terminate this Agreement for any reason. I understand that if HiPer Networks suspends Service or terminate this Agreement, HiPer Networks will give such notice as provided by applicable law, if any. I understand that if HiPer Networks suspends Service or terminate this Agreement for a reason other than my violation of this Agreement, all applicable fees and charges will accrue until the date of suspension or termination, but we will refund all prepaid monthly service fees charged for Services after the date of termination (less any outstanding amounts due HiPer Networks for the Services, affiliate services, equipment, or other applicable fees and charges). I understand and acknowledge that all HiPer Networks VoIP Service, including 911/E911, will be disabled because of termination of my account.

## 12. Disclaimer of Warranty; Limitation of Liability

(a) I AGREE THAT THE SERVICES ARE PROVIDED BY HiPer NETWORKS ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES THAT ARE IMPLIED BY, AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER, THE LAWS APPLICABLE TO THIS AGREEMENT. HiPer NETWORKS MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE HiPer NETWORKS EQUIPMENT WILL OPERATE AS INTENDED. IN PARTICULAR, I AGREE THAT MY USE OF THE HSD SERVICE (INCLUDING THE CONTENT, INFORMATION, SERVICES, EQUIPMENT AND SOFTWARE, THE PURCHASE OF MERCHANDISE AND SERVICES, THE TRANSMISSION OF INFORMATION AND OTHER COMMUNICATIONS BY AND TO ME AND THE DOWNLOADING OF COMPUTER FILES) IS AT MY SOLE RISK. I FURTHER AGREE THAT HiPer NETWORKS IS NOT RESPONSIBLE FOR THE RECORDING OF OR FAILURE TO RECORD ANY PROGRAM OR PORTION THEREOF, OR FOR THE CONTENT OF ANY PROGRAM OR CONTENT ON MY DVR.

WITHOUT LIMITING THE FOREGOING:

(i) ANY AND ALL PRODUCTS AND SERVICES PROVIDED BY HiPer NETWORKS AND/OR ISP AND/OR OLP AND/OR ANY LONG DISTANCE PROVIDER TO ME THAT ARE NOT PART OF THE SERVICES AS DEFINED HEREIN ARE OUTSIDE THE SCOPE OF THIS AGREEMENT AND THE HiPer NETWORKS PARTIES HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY SUCH PRODUCTS OR SERVICES; AND

(ii) NONE OF THE HiPer NETWORKS PARTIES MAKES ANY WARRANTIES AS TO THE SECURITY OF MY COMMUNICATIONS VIA HiPer NETWORKS'S FACILITIES OR THE SERVICES (WHETHER SUCH COMMUNICATIONS ARE DIRECTED WITHIN THE SERVICES, OR OUTSIDE THE SERVICE TO OR THROUGH THE INTERNET), OR THAT THIRD PARTIES WILL NOT GAIN UNAUTHORIZED ACCESS TO OR MONITOR MY COMPUTERS(S) OR ONLINE (INCLUDING VOICE) COMMUNICATIONS. I AGREE THAT NONE OF THE HiPer NETWORKS PARTIES WILL BE LIABLE FOR ANY SUCH UNAUTHORIZED ACCESS. I HAVE THE SOLE RESPONSIBILITY TO SECURE MY COMPUTER AND ONLINE (INCLUDING VOICE) COMMUNICATIONS.

(b) I ACKNOWLEDGE THAT HiPer NETWORKS'S OR MY INSTALLATION, USE, INSPECTION, MAINTENANCE, REPAIR, REPLACEMENT OR REMOVAL OF THE SERVICES, HiPer NETWORKS EQUIPMENT AND SOFTWARE MAY RESULT IN DAMAGE TO MY COMPUTER(S), TELEPHONES AND TELEPHONE ANSWERING DEVICES, TELEVISIONS, RECORDING AND PLAYBACK DEVICES, AUDIO EQUIPMENT, OR ANY CABLE MODEM, CABLING OR OTHER EQUIPMENT OR HARDWARE, INCLUDING SOFTWARE AND DATA FILES STORED THEREON. I SHALL BE SOLELY RESPONSIBLE FOR BACKING UP ALL EXISTING COMPUTER OR OTHER SOFTWARE OR DATA FILES PRIOR TO THE PERFORMANCE OF ANY OF THE FOREGOING ACTIVITIES. NONE OF THE HiPer NETWORKS PARTIES, OR THEIR VENDORS, LICENSEES OR PROGRAMMERS, SHALL HAVE ANY LIABILITY, AND EACH EXPRESSLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER, FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY EQUIPMENT, SOFTWARE, HARDWARE, DATA OR FILES RESULTING FROM A VIRUS, ANY OTHER HARMFUL FEATURE, OR FROM ANY ATTEMPT TO REMOVE IT.

(c) EXCEPT FOR THE CREDIT AS EXPRESSLY PROVIDED IN SECTION 9(A), IN NO EVENT (INCLUDING NEGLIGENCE) WILL ANY HiPer NETWORKS PARTY OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THE SERVICES (INCLUDING THE CONTENT INCLUDED THEREIN OR THE SERVICES ACCESSED THEREBY) OR EQUIPMENT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING THE USE OF OR INABILITY TO USE EMERGENCY 911 SERVICES, OR FOR ANY ACTION TAKEN HiPer NETWORKS TO PROTECT THE SERVICES OR THE BREACH BY HiPer NETWORKS OF ANY

## WARRANTY.

(d) I AGREE THAT THE PROVISIONS OF THIS SECTION 12 SHALL APPLY TO ALL CONTENT OR SERVICES INCLUDED IN, OR ACCESSIBLE THROUGH, THE SERVICES, AND ARE FOR THE BENEFIT OF, AND MAY BE ENFORCED BY, HiPer NETWORKS.

(e) I UNDERSTAND THE LIMITATIONS IN THIS SECTION SHALL APPLY WHERE HiPer NETWORKS MAKE AVAILABLE A DIRECTORY LISTING AND/OR PUBLICATION OPTION. IF (I) ANY PHONE NUMBER FOR WHICH I HAVE REQUESTED UNLISTED STATUS IS PUBLISHED IN ANY DIRECTORY; (II) ANY PHONE NUMBER FOR WHICH I HAVE REQUESTED NON-PUBLISHED STATUS IS INCLUDED IN ANY DIRECTORY, ANY DIRECTORY ASSISTANCE DATABASE, OR IS OTHERWISE DISCLOSED TO ANY UNAUTHORIZED PERSON; (III) ANY PHONE NUMBER WHICH I REQUESTED BE PUBLISHED OR LISTED IN ANY DIRECTORY OR DIRECTORY ASSISTANCE DATABASE IS NOT SO PUBLISHED OR LISTED, AND/ OR (IV) ANY PUBLISHED OR LISTED PHONE NUMBER CONTAINS MATERIAL ERRORS OR OMISSIONS, THEN THE TOTAL LIABILITY OF HiPer NETWORKS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES, ITS/THEIR AGENTS, AND ANY OTHER PROVIDER IN CONNECTION WITH THE DESCRIBED ERROR OR OMISSION SHALL NOT IN THE AGGREGATE EXCEED THE MONTHLY CHARGES, IF ANY, WHICH I HAVE ACTUALLY PAID TO HiPer NETWORKS TO LIST OR NOT TO LIST OR TO PUBLISH OR NOT PUBLISH THE NUMBER FOR THE AFFECTED PERIOD. I ACKNOWLEDGE THAT I SHALL HOLD HiPer NETWORKS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES, ITS/THEIR AGENTS, AND ANY OTHER PROVIDER WHO FURNISHES SERVICES TO ME IN CONNECTION WITH THIS AGREEMENT HARMLESS AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS DESCRIBED ABOVE.

### 13. Privacy

(a) My privacy interests, including my ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the Communications Act of 1934, as amended, and the Electronic Communications Privacy Act. Personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in the Subscriber Privacy Notice delivered to me by HiPer Networks. I acknowledge receipt of the Subscriber Privacy Notice, which is deemed to form a part of this Agreement, as it may be amended from time to time.

(b) I agree that, in addition to actions and disclosures specifically authorized by law or statute or authorized elsewhere in this Agreement, HiPer Networks shall have the right (except where prohibited by law notwithstanding my consent), but not the obligation, to disclose any information to protect their respective rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril. I consent to such actions or disclosures.

(c) If I am a Local Telephone Service, Long Distance Telephone Service and/or VoIP Service customer, I consent to HiPer Networks' disclosure of my name, address and/or telephone number to the general public in connection with Caller ID functions, telephone directories, and 411 and 911 Services. I also consent to HiPer Networks' disclosure of personally identifiable information to the telephone companies serving those end users to whom I make calls so that the calls can be completed. If I wish to have HiPer Networks remove this information from one or more of these Services, I understand that I may notify HiPer Networks to do so, subject to any applicable fees.

### 14. Consent to Phone and Email Contact

(a) I consent to HiPer Networks calling the phone numbers I supply to it for any purpose, including the marketing of its current and future Services. I agree that these phone calls may be made using any method, including an automatic dialing system or an artificial or recorded voice. Upon my request, the phone numbers I have previously provided will be removed from HiPer Networks's phone marketing list. I can make this request by calling or writing my local HiPer Networks office and asking to be placed on HiPer Networks' Do Not Call List.

(b) I acknowledge that being included in any state or federal "do not call" registry will not be sufficient to remove me from HiPer Networks' phone marketing list.

(c) I consent to HiPer Networks emailing me, at any email address, including that of a wireless or mobile device, that I provide to HiPer Networks (or that HiPer Networks issues to me

in connection with the HSD Service), for any purpose, including the marketing of HiPer Networks's current and future Services. If my wireless or mobile provider charges me for receipt of such messages, I acknowledge and agree that I am responsible for paying such charges. I may revoke this authorization insofar as it relates to marketing messages at any time by calling or writing my local HiPer Networks office.

#### **15. Arbitration**

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THIS AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRARINESS OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

#### **16. Indemnification**

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HiPer NETWORKS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES, ITS/THEIR AGENTS, AND ANY OTHER PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THIS AGREEMENT, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO OR ARISING OUT OF YOUR BREACH OF THIS AGREEMENT OR YOUR AND YOUR USERS' USE OF THE SERVICES OR ANY HiPer NETWORKS EQUIPMENT, INCLUDING BUT NOT LIMITED TO ANY CLAIMS OR DAMAGES ARISING OUT OF THE MALFUNCTION OR LACK OF 911/E911 OR DIALING ASSOCIATED WITH A SECURITY SYSTEM. YOU AGREE THAT HiPer NETWORKS SHALL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS AGAINST US THAT ARISE FROM YOUR USE OF THE SERVICES OR THE HiPer NETWORKS EQUIPMENT. FURTHERMORE, YOU AGREE TO REIMBURSE US FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS.

#### **17. Transfer of My Phone Number(s)**

(a) I understand that if I am switching to HiPer Networks's Local Telephone Service or VoIP Service from another service provider, I may transfer my existing phone number (if any) to HiPer Networks's Local Telephone Service or VoIP Service, provided that: (i) I request the phone number transfer when I place my order for HiPer Networks's Local Telephone Service or VoIP Service; (ii) my current service provider releases my existing phone number, at our request, without delay or charge; (iii) the transfer of my existing phone number to HiPer Networks's Local Telephone Service or VoIP Service would not, in HiPer Networks's view, violate applicable law or HiPer Networks's processes and procedures; (iv) when applicable, I acknowledge and agree that if my MTA is set up before the date that the number transfer becomes effective ("Port Effective Date"), I may only be able to make limited outgoing calls over the phone that I have connected to the MTA. In that event, I understand I should keep another phone connected to an existing phone extension at my service location to receive incoming calls until the Port Effective Date, after which I will be able both to make and to receive calls using HiPer Networks Service; and (v) I acknowledge and agree that to avoid an interruption in my phone service, it is extremely important that I have the phone or MTA installed on or before the Port Effective Date. I understand that my existing phone service for the number I am transferring will be disconnected on the Port Effective Date; I understand that if my MTA or phone is not yet activated, I will not have access to our VoIP or Local Telephone Services. I acknowledge therefore, I will not have VoIP or Local Telephone Service for that phone number. HiPer Networks will provide me with an



estimate of the Port Effective Date at the time of service ordering or via e-mail following my completion of the ordering process.

(b) I understand that in order to transfer my phone number from HiPer Networks to another service provider, I must terminate Local Telephone Service or VoIP Service and place the transfer order through my new service provider (and not through HiPer Networks). I understand that HiPer Networks will release my phone number to my new service provider, provided that (i) my new service provider requests the transfer upon termination of my account; (ii) my new service provider is willing to accept transfer of the phone number without delay or charge; and (iii) transfer of my existing phone number to the new service provider would not, in our view, violate applicable law or our processes and procedures.

## **18. Interpretation; Severability**

This Agreement is, and shall be interpreted as, subject to applicable law and regulation and to any applicable franchise agreement between a governmental authority and HiPer Networks. In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties as set forth herein, and the remainder of this Agreement shall remain in full force and effect.

## **19. Consent to Electronic Notice**

I agree that unless otherwise specified, all notices required or contemplated hereunder will be provided by HiPer Networks by such means as HiPer Networks shall determine in its discretion. Without limiting the foregoing, I agree that HiPer Networks may provide any notices required or contemplated hereunder or by applicable law, including notice of changes to this Agreement, the Terms of Use, the Price List(s) or the Privacy Notice, by electronic means (for example, email or online posting). An online version of this Agreement, the Terms of Use, the Subscriber Privacy Notice and any applicable Price List(s), as so changed from time to time, will be accessible at [www.HiPer.networks](http://www.HiPer.networks) or another online location designated by HiPer Networks, or can be obtained by calling my local HiPer Networks office.

## **20. Assignment**

I understand that my Services are being provided only to the location identified on my ticket and that I am not allowed to transfer all or any portion of the Services, or HiPer Networks' Equipment, to any other person, entity or location, including a new residence. I agree that I may not assign or transfer this Agreement. HiPer Networks may transfer or assign any portion or all of this Agreement at any time without notice to me, and I waive any such notice which may be required.

## **21. Effect of Applicable Law; Reservation of Rights**

This Agreement, the ticket and the Terms of Use are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which I receive my Services. If any provision of this Agreement, the ticket or the Terms of Use contravene or are in conflict with any such law or regulation, or if I am entitled to more favorable rights under any such law or regulation than are set forth in any provision in this Agreement, the ticket or the Terms of Use, then the terms of such law or regulation, or the rights to which I am entitled under such law or regulation, shall take priority over the relevant provision of this Agreement, the ticket or the Terms of Use. If the relevant law or regulation applies to some but not all of my Service(s), then such law or regulation will take priority over the relevant provision of this Agreement, the ticket or the Terms of Use only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in this Agreement, nothing contained in this Agreement shall constitute a waiver by me or HiPer Networks of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment. No waiver by either party of any breach or default shall be deemed to be a waiver of any preceding or subsequent breach or default.

## **22. Conflicting Terms**

In the event of a conflict in the terms and conditions between this Services Subscriber Agreement and the accompanying ticket, then the terms and conditions of this Services Subscriber Agreement shall control.

Subscriber Signature: \_\_\_\_\_

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