



## BLUE MOUNTAIN NETWORKS TERMS & CONDITIONS OF SERVICE FOR RESIDENTIAL SUBSCRIBERS

### Introduction

- A. The Terms and Conditions of Service, the accompanying Work Order, the corresponding Terms of Use and the related Price List(s) (collectively, the “Terms and Conditions”) sets forth the terms and conditions under which Blue Mountain Networks, together with any of its affiliates and/or distribution partners (collectively, “Blue Mountain Networks,” “BMN,” “Blue Mountain,” or “we”), agrees to provide the Services described herein. The account holder(s) referred to on the accompanying Blue Mountain Networks Work Order or statement (“I,” “me,” “my,” “you,” or “your”) agrees that this Terms and Conditions of service sets forth the terms and conditions that govern my receipt of Services from Blue Mountain Networks, which may include, among others, internet service(s), high-speed data service(s), 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 the Terms and Conditions, 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 Blue Mountain Networks. This Terms and Conditions of Service takes effect on the date on which you register for service(s) with BMN and continues until your subscription is terminated, either by BMN or by you.
- B. Blue Mountain Networks reserves the right to modify the terms and conditions of service 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 or by notifying you of these changes. An online version of the terms and conditions of service, as so changed from time to time, will be accessible at [www.bluemountainnet.com](http://www.bluemountainnet.com) or another online location designated by Blue Mountain Networks, or can be obtained via email by calling your local Blue Mountain Networks office. Your continued use of the Services after changes are posted constitutes your acceptance of the modification of the terms and conditions of service. The updated, online version of these terms and conditions of service shall supersede any prior version of the terms and conditions of service that may have been included in any email, letter, software or related materials provided by Blue Mountain Networks.
- C. Blue Mountain Networks will provide notice of any significant change(s) in terms and conditions of service. 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 terms and conditions of service 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 Blue Mountain Networks that you are terminating your account.

- D. In consideration of Blue Mountain Networks's provision of the Services that you have requested, subject to applicable law, YOU AGREE AS FOLLOWS:
- E. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MUST IMMEDIATELY STOP THE USE OF THE SERVICE(S) AND NOTIFY THE BLUE MOUNTAIN NETWORKS CUSTOMER SERVICE DEPARTMENT SO THAT YOUR ACCOUNT MAY BE CLOSED.

## 1. Definitions

- A. "Terms and Conditions of Service" means this Service Subscriber Terms and Conditions, as it may be amended from time to time by Blue Mountain Networks, the accompanying Work Order, the corresponding Company Policies and the related Price List(s). This Terms and Conditions of Service is equivalent to a Customer Agreement between you and BMN.
- B. "Computer" means the personal computer(s) or mobile device located at my residence that will be used to access the HSD Service, as specified on the accompanying Work Order. This includes, but is not limited to: personal laptop, desktop computer, tablet, mobile device used to access the internet service.
- C. "Customer Equipment" or "CPE" 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, routers, voice-enabled cable modems, remote control units, multimedia terminal adapter ("ATA") and any other equipment provided by me for use in connection with the Services under these Terms and Conditions of Service. BMN may or may not service this Customer Equipment.
- D. "HSD Service" and "High Speed Data Service" means the online content, features, functions and Services (which may include Internet access) of the ISP or OLP selected by me, as provided over Blue Mountain Networks' systems.
- E. "Including" or "include" shall mean inclusion, without limitation.
- F. "ISP" means the Internet Service Provider selected by me from among those offered now or in the future by Blue Mountain Networks for the HSD Service.
- G. "Local Telephone Service" and "Long Distance Telephone Service" are set forth in the Blue Mountain 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, the provisions found in the tariff will take precedence.
- H. "Me," "My," and "I" mean the account holder identified on the Work Order who is authorized by Blue Mountain Networks to access and use the Services.
- I. "ATA" means analog telephone adapter, also known as a "SPA."
- J. "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.

- K. "Price List(s)" means the prices, as maintained pursuant to a pricing schedule that may be updated from time to time, for which Blue Mountain Networks offers Service in my jurisdiction.
- L. "Service" or "Services" means that service or those services provided to me by Blue Mountain Networks, which may include, High Speed Data Service, Local Telephone Service, Long Distance Service, VoIP Service and equipment based Services.
- M. "Software" means the computer software, if any, licensed by ISP or OLP to me to access the HSD Service, or licensed by Blue Mountain 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 Blue Mountain Networks Equipment.
- N. "Subscriber Materials" means the handbooks, manuals and other guide materials provided by Blue Mountain Networks or any third party (including my ISP or OLP) regarding use of the Services.
- O. "Privacy Statement" means the Privacy Statement or Statement as it may be amended from time to time by Blue Mountain Networks.
- P. "Terms of Use" shall mean all rules, terms and conditions set forth in this Agreement or otherwise established now or hereafter by Blue Mountain Networks regarding permissible or impermissible uses of or activities related to, the HSD Service.
- Q. "Blue Mountain Networks," "Blue Mountain Networks Parties" or "we" means BMNDivision Holdings, LLC d/b/a Blue Mountain Networks and any of its affiliates and subsidiaries and their respective directors, officers, employees and agents, as well as the local Blue Mountain Networks-affiliated cable operator that is providing the Services over its cable system, or any person or entity to whom Blue Mountain Networks assigns this Agreement.
- R. "Blue Mountain Networks Equipment" means any equipment provided by Blue Mountain 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 ("ATA") and any other equipment or materials provided to me by Blue Mountain Networks for use in connection with the receipt of Services.
- S. "VOD" means video on demand.
- T. "VoIP Service" means the provision of access to Blue Mountain Networks's 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 Blue Mountain Networks's network.
- U. "Work Order" means the Blue Mountain Networks work order provided to me in connection with the installation or commencement of my Service(s).

## 2. Important Information Concerning This Terms & Conditions of Service

- A. This document, as it may be amended from time to time, constitutes the entire agreement between Blue Mountain Networks and me. This Terms & Conditions of Service supersedes all previous written or oral agreements between Blue Mountain Networks

and me. I am not entitled to rely on any oral or written statements by Blue Mountain Networks's representatives relating to the subjects covered by these documents, whether made prior to the date of my Work Order or thereafter, and Blue Mountain Networks will have no liability to me except in respect of its obligations as described in the Terms & Conditions of Service 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 document.

- B. Blue Mountain Networks has the right to add to, modify, or delete any term of this document at any time. An online version of the Terms & Conditions of Service, the Privacy Statement and any applicable Price List(s), as so changed from time to time, will be accessible at [www.bluemountainnet.com](http://www.bluemountainnet.com) or another online location designated by Blue Mountain Networks, or can be obtained by calling a Blue Mountain Networks office.
- C. Blue Mountain Networks will notify me of any significant change(s) in this document. 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 Blue Mountain 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 Blue Mountain Networks for:
  - a. (i) all use of my Services (ii) installation and applicable service charges, (iii) Blue Mountain 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 Internet Regulatory Recovery Fee ("IRRF") in the amount of \$3.99 in all US state (with the exception of Washington State, in which the IRRF amount will be \$1.79) applicable to the Services I use, and recurring on a monthly basis, for the duration of my HSD services. I will be billed monthly in advance for recurring monthly charges. Other charges will be billed in the next designated monthly billing cycle following use, or as otherwise specified in the applicable Price List(s). Blue Mountain 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 as designated by BMN.

- 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 Blue Mountain Networks installs my ATA, the Billing Commencement Date is the day of installation. I understand that if I self-install an ATA that Blue Mountain Networks has shipped to me, the Billing Commencement Date is the earlier of (i) the day I install the ATA or (ii) five (5) days after the shipment date. I understand that if I self-install an ATA that I obtained from a source other than Blue Mountain Networks, the Billing Commencement Date is the day my order for Service is entered into Blue Mountain Networks' systems. The option to self-install an ATA and/or to use a non-Blue Mountain Networks-supplied ATA is subject to availability.
- C. Charges for Installation of Services and related equipment available from Blue Mountain 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) or determined by BMN. In addition, I agree to pay charges for repair service calls resulting from my misuse of Blue Mountain Networks Equipment or for failures in equipment not supplied by Blue Mountain Networks.
- D. If my Services account is past due and Blue Mountain 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 Blue Mountain Networks in collecting any amounts due under this Terms and Conditions of Service and not paid by me.
- E. All charges are payable on the due date specified, or as otherwise indicated, on my bill. Payment shall be made on or before the due date of each bill. There is a five day grace period, upon which a Late Fee will be applied. Past due amounts are due immediately. 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 my agreement to receive Services from BMN. 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. Blue Mountain Networks reserves the right to change the late fees.
- F. I agree that if my Services account with Blue Mountain Networks is past due, Blue Mountain Networks may charge my account with a Late Fee and/or adjust/throttle my service(s). Blue Mountain Networks may suspend or terminate any of my Services or accounts, including VoIP Service, in accordance with applicable law, due to an outstanding and past due balance. Reconnect Fees may apply to any outstanding and past due balances if service(s) is suspended or terminated by Blue Mountain Networks.
- G. If I have a credit due to me or a deposit is being held on any account with Blue Mountain Networks, I agree that the credit or deposit may be used to offset amounts past due on any other account I may have with Blue Mountain Networks without notice to me. To reconnect any suspended or terminated Services, I may be required, in addition to payment of all outstanding balances on all accounts with Blue Mountain Networks, to pay reconnect charges or truck roll charges (where applicable) and/or additional fees before reconnection, due to the disconnection of services at the time of account suspension or termination.

- H. Blue Mountain Networks requires a bank account, ACH or credit card authorization from me as a condition of providing or continuing to provide Services. I agree that Blue Mountain Networks may bill any bank or credit card submitted by me, or utilize any other means of payment available to Blue Mountain Networks, for any past due amounts payable by me to Blue Mountain Networks, including in respect of damaged, lost or Unreturned Equipment.
- I. 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 these Terms and Conditions of Service, for Service(s) provided by Blue Mountain Networks. If I make payment by check, I authorize Blue Mountain Networks and its agents to collect this item at an additional cost, in the form of a Check Processing Fee. If I do not elect to be billed electronically, I agree that I may be subject to a Manual Payment Fee to cover time and labor associated with the processing of my Manual Payment.
- J. Blue Mountain 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. Blue Mountain Networks reserves the right to change return/charge-back fees.
- K. Blue Mountain Networks has moved to paperless billing and now provides emailed invoices to customers free of charge. If I request physical mailed paper invoices, BMN reserves the right to charge a Paper/Mailed Invoice Fee for each invoice. I may view and download invoices via the Blue Mountain Networks Customer Portal at <https://portal.bluemountainnet.com/>.
- L. 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 merchandise ordered via Internet, international long distance charges, Copyright Infringement offense charges, etc.). Blue Mountain 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 entities affiliated with Blue Mountain 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 Blue Mountain Networks Parties for all liability for such charges. I agree that Blue Mountain 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. I also agree to pay any BMN fees associated with my use of the internet service, either by me or by a Third Party located at my service address.



- M. I acknowledge that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services Blue Mountain Networks provides and, consequently, uncertainty about what fees, taxes and surcharges are due from Blue Mountain Networks and/or its customers. Accordingly, I agree that Blue Mountain 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 Blue Mountain Networks's 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 Blue Mountain Networks office currently collects or passes through by writing to Blue Mountain Networks at the following address and requesting same: Blue Mountain Networks LLC, 2180 SE Kelli Blvd, Hermiston, Oregon 97838 ; Attention: Accounting Department - Subscriber Tax and Fee Inquiries.
- N. I agree that it is my responsibility to report Blue Mountain 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 billing errors are waived.

#### 4. Installation: Equipment and Cabling

- A. If I am not the owner of the house, apartment or other premises upon which Blue Mountain Networks Equipment and Software are to be installed, I warrant that I have obtained the consent of the owner of the premises for Blue Mountain 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 Blue Mountain Networks Parties harmless from and against any claims of the owner of the premises arising out of the performance of my agreement to receive services from BMN, per the Terms and Conditions of Service (including costs and reasonable attorneys' fees).
- B. I authorize Blue Mountain Networks to make any preparations to the premises necessary for the installation, maintenance, or removal of equipment. Blue Mountain Networks shall not be liable for any effects of normal Services installation and workmanship, such as holes in walls, pulling of wires or fiber, etc., which may remain after installation or removal of the Blue Mountain Networks Equipment, except for damage caused by the gross negligence or willful misconduct on the part of Blue Mountain Networks.
- C. The Blue Mountain Networks Equipment is and at all times shall remain the sole and exclusive personal property of Blue Mountain Networks, and I agree that I do not become an owner of any Blue Mountain Networks Equipment by virtue of the payments provided for in my agreement to receive Services from BMN, or the attachment of any portion of the Blue Mountain Networks Equipment to my residence or otherwise. Upon termination of any Services, subject to any applicable laws or regulations, Blue Mountain Networks may, but shall not be obligated to, retrieve any associated Blue Mountain Networks Equipment not returned by me as required under Section 4(F) below. Blue Mountain Networks will not be deemed to have "abandoned" the Blue Mountain Networks Equipment if it does not retrieve such equipment.

- D. I agree to provide Blue Mountain Networks and its authorized agents access to my premises during regular business hours upon reasonable notice during the term of my service with BMN, and after its termination to install, connect, inspect, maintain, repair, replace, alter or disconnect or remove the Blue Mountain Networks Equipment, to install Software, to conduct service theft audits, or to check for signal leakage. I agree that Blue Mountain Networks may have reasonable access to easements and Blue Mountain Networks Equipment located on my grounds.
- E. Blue Mountain Networks shall have the right to upgrade, modify and enhance Blue Mountain Networks Equipment and Software from time to time through “downloads” from Blue Mountain Networks’s network or otherwise. Without limiting the foregoing, Blue Mountain Networks may, at any time, employ such means to limit or increase the throughput available through individual cable modems whether or not provided by Blue Mountain Networks.
- F. If the Services are terminated, I agree that I have no right to possess or use the Blue Mountain Networks Equipment related to the terminated Services. I agree that I must arrange for the return of Blue Mountain Networks Equipment to Blue Mountain 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 Blue Mountain Networks Equipment or schedule with Blue Mountain Networks for its disconnection and removal, within the designated time frame, Blue Mountain Networks may enter any premises where the Blue Mountain Networks Equipment may be located for the purpose of disconnecting and retrieving the Blue Mountain Networks Equipment. I will pay any expense incurred by Blue Mountain Networks in any retrieval of the Unreturned Blue Mountain Networks Equipment. Blue Mountain Networks may charge me a Unreturned Equipment Fee if Blue Mountain Networks Equipment is not returned to BMN within the designated time frame. If Blue Mountain Networks Equipment is returned after the designated time frame, the Unreturned Equipment Fee will be refunded up to 50% of the billed amount. The current fee is listed in the list of charges on the price list or can be provided on request.
- G. I agree to pay Blue Mountain Networks liquidated damages in the amount demanded by Blue Mountain Networks, but not to exceed that specified in the then-current Price List, for the replacement cost of the Blue Mountain Networks Equipment without any deduction for depreciation, wear and tear or physical condition of such Blue Mountain Networks Equipment if (i) I tamper with, or permit others to tamper with, Blue Mountain Networks Equipment, (ii) the Blue Mountain 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 Blue Mountain 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 Blue Mountain 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 Blue Mountain Networks Equipment. I agree to return any damaged Blue Mountain Networks Equipment to Blue Mountain Networks.

- H. I agree that Blue Mountain 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 my agreement to receive Services, until the date that is one year from the date on which I first notify Blue Mountain 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 Blue Mountain Networks cannot get access to my inside phone wiring, I understand that I will need a cordless phone to use Blue Mountain Networks's Services throughout my dwelling. To use the VoIP Service, I understand I will also need an ATA certified by Blue Mountain Networks. I understand that I can lease an ATA, phone device or VOIP equipment, from Blue Mountain Networks for a monthly recurring charge, in which case it will be Blue Mountain Networks Equipment (as defined below). Or, in some areas, I understand that Blue Mountain Networks may permit me to use the Services with an ATA which I have purchased, in which case the ATA will be Customer Equipment. Depending on availability in my area, I understand I may have an option to install the ATA myself ("self-installation") or to have Blue Mountain Networks install it for me.
- J. To use the HSD or Internet Service, I understand I will also need a modem, router, modem/router combination, eero, eero Pro, ONT or other internet equipment certified by Blue Mountain Networks. I understand that I can lease an Internet Equipment Device(s) ("CPE") from Blue Mountain Networks for a monthly recurring charge, in which case it will be Blue Mountain Networks Equipment (as defined below). Or, in some areas, I understand that Blue Mountain Networks may permit me to use the Services with an Internet Equipment Device(s) which I have purchased, in which case the CPE will be Customer Equipment. Depending on availability in my area, I understand I may have an option to install the CPE myself ("self-installation") or to have Blue Mountain Networks install it for me.
- K. I represent that I either own the Customer Equipment or have the right to use that equipment in connection with the Services. Blue Mountain Networks shall have no obligation to provide, maintain, or service the Customer Equipment (including but not limited to any CPE or ATA that I have purchased). I acknowledge that any Customer Equipment that I use in connection with the Services must meet Blue Mountain Networks' current minimum technical and other requirements. Those requirements are available by contacting your local BMN office. The requirements may be revised by Blue Mountain 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 ATA, and (ii) that the following limitation of liability shall

apply: NEITHER BLUE MOUNTAIN 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 BLUE MOUNTAIN 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 the Terms & Conditions of Service.

- L. Blue Mountain Networks Equipment will at all times remain the property of Blue Mountain Networks or its designee. I acknowledge that Blue Mountain Networks Equipment is merely a means for BMN to provide me the Services and that Blue Mountain Networks may remove or change it at its discretion. I acknowledge that I am not to use Blue Mountain Networks Equipment for any purpose other than to use the Services in accordance with these Terms & Conditions of Service and/or Work Order. Blue Mountain Networks will repair and maintain all Blue Mountain Networks Equipment during the length of time that the customer renders services from BMN. I acknowledge that I will not allow the Blue Mountain Networks Equipment to be serviced by anyone other than Blue Mountain Networks employees or agents. I acknowledge that I will not sell, transfer, lease, encumber, or assign all or any part of the Blue Mountain Networks Equipment to any third party. If any Blue Mountain Networks Equipment or part thereof is lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered, or assigned, I agree to pay Blue Mountain Networks the full BMN-designated Unreturned Equipment Fee for its replacement, together with any incidental costs that we incur relating to its replacement, such as Processing Fees or Restocking Fees. I acknowledge that I will not relocate Blue Mountain Networks Equipment to any other location unless authorized by BMN. At my request, Blue Mountain Networks may relocate the Blue Mountain Networks Equipment within the Premises for an additional charge, at a time agreeable to me and to Blue Mountain Networks. If I change residences, I understand that I must contact Blue Mountain Networks for information on whether the Blue Mountain 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 Blue Mountain Networks for information on the necessary procedures and cost.

## **5. Use of Services: Blue Mountain Networks Equipment and Software**

- A. I agree that Blue Mountain Networks has the right to add, modify, or delete any aspect, feature or requirement of the Services (including content, price, equipment and system requirements). If Blue Mountain 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. 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 Blue Mountain Networks shall have the right to add, 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:
- a. 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 Work Order (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 Blue Mountain Networks Equipment or with the VoIP Service, or permit any other person (not expressly authorized by Blue Mountain Networks) to do so. I agree that the ATA and VoIP Service will only be used at my service address appearing in Blue Mountain Networks's records. I understand and acknowledge that if I attempt to install or use the Blue Mountain 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 ATA or VoIP Service to another location without complying with Section 4(I, K, L), I will be doing so in violation of BMN policies and at my own risk. I understand that if I violate any of the restrictions in Section 5(B), Blue Mountain 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.
- C. VoIP Service and Blue Mountain Networks Equipment, including any firmware or software embedded in the Blue Mountain 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 BMN Terms and Conditions of Service. I acknowledge and understand that I am not granted any other license to use the firmware or software embedded in the Blue Mountain Networks Equipment or used to provide the

VoIP Service. I expressly agree that I will use the Blue Mountain 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 Blue Mountain Networks, which Blue Mountain 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 Blue Mountain Networks against any and all liability arising out of my use of such interface devices with the VoIP Service.

- D. 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 Work Order 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.
- E. Theft or willful damage, alteration, or destruction of Blue Mountain Networks Equipment, or unauthorized reception, theft or diversion of Services, or assisting such theft, diversion, or unauthorized reception is a breach of BMN Terms and Conditions of Service and potentially punishable under law (including by way of statutory damages, fine and/or imprisonment). Nothing in these Terms and Conditions of Service, shall prevent Blue Mountain Networks from enforcing any rights it has with respect to theft or unauthorized tampering of Services or Blue Mountain Networks Equipment under applicable law.
- F. I will not, nor will I allow others to, open, alter, misuse, tamper with or remove the Blue Mountain Networks Equipment as and where installed by Blue Mountain Networks or use it contrary to these Terms and Conditions of Service. I will not, nor will I allow others to, remove any markings or labels from the Blue Mountain Networks Equipment indicating Blue Mountain Networks ownership or serial or identity numbers. I will safeguard the Blue Mountain 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 Blue Mountain Networks to perform any work on the Blue Mountain Networks Equipment.
- G. I agree that to the extent any Software is licensed (or sublicensed) to me by Blue Mountain Networks, such Software is provided for the limited purpose of facilitating my use of the Services. 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 Blue Mountain Networks and any related written materials promptly upon termination of the associated Services to me for any reason.

- H. I agree that I will use the Services for lawful purposes only, and in accordance with these Terms and Conditions of Service.
- I. 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 Blue Mountain Networks. I also acknowledge that Blue Mountain Networks's Services may from time to time include interactive features, the use of which may result in the transmission to, and use by, Blue Mountain 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 Blue Mountain Networks may be required, under the Communications Act of 1934, to obtain my consent. I agree that Blue Mountain Networks may seek such consents (or indications of my election to "opt in" to certain Blue Mountain 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 Blue Mountain Networks as my consent or opt-in election for the use of personally identifiable information.
- J. I agree that Blue Mountain 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 Blue Mountain 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 ATA may not have battery backup or another power source of its own.
- D. I agree that Blue Mountain 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 Blue Mountain 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 Work Order and on my Account. I acknowledge that (as indicated above) I am not permitted to move Blue Mountain 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 Work Order, calls from such modem to 911 will appear to 911 emergency service operators to be coming from the address identified on the Work Order 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 Blue Mountain 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 Blue Mountain 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 Blue Mountain Networks, in order to access such Services.
- I. For 911/E911 to work in accordance with Blue Mountain Networks's specifications, I understand that Blue Mountain Networks must have a correct service address for the location of my ATA. I understand that if I do not provide the correct address when I register for VoIP Service or if I relocate my ATA to a new address and do not register the new address with Blue Mountain 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 ATA and continue to use VoIP Service including 911/E911, I understand that I must comply with Sections above, seek authorization for VoIP Service at my new service address (if available), and update my service address with Blue Mountain Networks. I understand 911/E911 may not function if VoIP Services are interrupted for any reason, including but not limited to failure of my ATA, incorrect configuration of my ATA, 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 BLUE MOUNTAIN 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 BLUE MOUNTAIN 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 BLUE MOUNTAIN 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), and other similar limits, all as set forth in the price list. I agree that Blue Mountain Networks may change the throughput, consumption and other applicable limits of any tier(s) by amending the price list or these Terms and Conditions of Service. My continued use of the HSD Service will constitute my acceptance of any new limits. I also agree that Blue Mountain 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 Blue Mountain 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 Blue Mountain 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. BMN 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.
- a. I acknowledge that material posted or transmitted through the HSD Service may be copied, republished or distributed by third parties, and that the Blue Mountain Networks Parties will not be responsible for any harm resulting from such actions.
  - b. I grant to Blue Mountain 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.
  - c. I agree that unsolicited email, or “spam,” is a nuisance and that Blue Mountain Networks is 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 Internet Service provides a connection to the Internet that may be unfiltered, and that the Blue Mountain Networks Parties neither control nor assume responsibility for any content on the Internet or content that is posted by a subscriber. Although Blue Mountain Networks 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 Blue Mountain Networks 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 BMN policies, any Blue Mountain Networks limits or any other policies or conditions of service. Such material might include personal home pages and links to other sites. In addition, I agree that, under such circumstances, Blue Mountain 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 Blue Mountain Networks may suspend or cancel my account for using all or part of the HSD Service to post illegal copyright content to the Internet or to engage in “peer to peer” file exchanges or other forms of file exchanges that violate the law or these Terms and Conditions of Service.
- E. I agree that each Computer will need to meet certain minimum hardware and software requirements that will be specified for certain HSD or Internet Service, and that such requirements may be changed from time to time by Blue Mountain Networks.

## 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. Blue Mountain Networks will, at its own expense, repair damage to or, at Blue Mountain Networks’ option, replace Blue Mountain Networks Equipment, and otherwise attempt to correct interruptions of the Services, due to reasonable Blue Mountain Networks Equipment wear and tear, or technical malfunction of the system or network operated by Blue Mountain Networks. The Subscriber Materials and [www.bluemountainnet.com](http://www.bluemountainnet.com) contain details on contacting Blue Mountain Networks for this support.
- B. Unless I have obtained a Blue Mountain Networks service protection plan (if available in my area) or I am leasing Blue Mountain Networks Equipment, I agree that I am responsible for all wiring, equipment and related software or hardware installed in my residence that is not Blue Mountain Networks Equipment or Blue Mountain Networks-licensed Software and Blue Mountain Networks will have no obligation to install, connect, support, maintain, repair or replace any Computer, television, telephone or telephone answering device, tablet, audiovisual recording or playback device (e.g., VCR, DVR, DVD), audio equipment, any software, or any cable modem, router, cabling or other equipment (other than Blue Mountain Networks Equipment or Blue Mountain

Networks-licensed Software). Blue Mountain Networks will not support, repair, replace, or maintain any Network Interface Card, regardless of whether provided and installed by Blue Mountain Networks.

- C. I agree that Blue Mountain Networks has no responsibility for the operation of any equipment, software or service other than the Services, the Blue Mountain Networks Equipment and the Blue Mountain Networks licensed Software. If I receive HSD Service, Blue Mountain 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. 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 equipment manufacturer or to the support area of the relevant third party's material.
- D. If Blue Mountain Networks determines that non-Blue Mountain Networks cabling or equipment connecting my residence to Blue Mountain 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 Blue Mountain Networks may charge me to resolve such service problem. If available from Blue Mountain Networks in my area, I may subscribe to a Blue Mountain Networks service protection plan that covers service related calls within my residence. If any other support Services are available from Blue Mountain Networks, such Services will be at additional charges as described in Blue Mountain Networks's price list.
- E. If I determine that I need a Service Call or a Service Technician Visit from Blue Mountain Networks to visit my residence to resolve an issue, and I am not subscribed to a customer protection plan (if available in my area) I agree to pay the standard rate for this as outlined in the Pricing List(s) or as designated by the Customer Service Representative at time of scheduling. If after the appointment, it is determined that the issue was a Customer Equipment issue, no refund will be issued. If after the appointment, it is determined that the issue was a Blue Mountain Networks issue, the standard rate (as designated in the Pricing List(s) may be refunded to me.

## 9. Service Interruptions: Force Majeure

- A. I agree that Blue Mountain Networks has no liability for delays in or interruption to my Services, except that if for reasons within Blue Mountain Networks's reasonable control, for more than twenty-four (24) consecutive hours, (i) there is a complete failure of the HSD Service or (ii) there is a complete failure of the VoIP Service, Blue Mountain 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, Blue Mountain Networks will issue credits for HSD or VoIP service problems where a credit request is made within 30 days of the interruption or failure. In no event shall Blue Mountain Networks be required to credit me an amount in excess of applicable service fees. Blue Mountain 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 an event, the relevant

law or regulation will control. If service is terminated prior to the credit issuing, the prorated credit will be applied to the remainder of my bill and I will not be refunded via Paper Check unless the amount exceeds \$10.00 per these Terms and Conditions of Service and the BMN Refund policies.

- B. I acknowledge that Blue Mountain Networks may conduct maintenance from time to time that may result in interruptions of my Services. These maintenance periods (if not exceeding 24-hours without service(s)) are not eligible for the credit policy designated above.
- C. The Blue Mountain 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. Blue Mountain Networks is only obligated to provide the above-referenced credits for loss of HSD Service if Blue Mountain Networks is billing me for the HSD Service at the time of the outage.

## 10. Review and Enforcement

- A. Blue Mountain Networks may suspend or terminate all or a portion of my Services without prior notification if Blue Mountain Networks determines in its discretion that I have violated BMN policies, Privacy Statement, or any of these Terms and Conditions of Service, 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 Blue Mountain Networks, so long as the refund amount exceeds \$10.00, if the amount is to be refunded via paper check.
- B. I agree that Blue Mountain Networks shall have the right to take any action that Blue Mountain Networks deems appropriate to protect the Services, Blue Mountain Networks's facilities or Blue Mountain Networks Equipment.

## 11. Term: Termination of Service(s)

- A. My agreement to abide by these Terms and Conditions of Service will remain in effect until terminated by either party. I will provide a 30-day notice of my intent to terminate my Services, otherwise I will not receive a refund for any bills paid through the end of my requested termination date monthly billing cycle. By providing a 30-day notice, my bill will be prorated for the remainder of my service period.
- B. Either Blue Mountain 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).
- C. If I am moving or wish to terminate all or any portion of my Services for any reason, I will notify Blue Mountain Networks by phone or by email in order to set up a disconnect

appointment and provide Blue Mountain Networks with access to my premises to disconnect the relevant Services and recover the Blue Mountain Networks Equipment specified on the Work Order on a DATE PRIOR TO the last day of residency or requested termination date. 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, Blue Mountain 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 last day of the month of termination, but if provided a 30-day termination notice, Blue Mountain Networks will prorate monthly service fees charged for Services after the date of termination (less any outstanding amounts due Blue Mountain Networks for the Services, affiliate services, equipment, or other applicable fees and charges).

- D. For any refunds, Blue Mountain will refund prorated charges via ACH, bank account, credit card or debit card for payment methods on file with BMN for any amount. For paper checks to be mailed, BMN will only refund me for any amount exceeding \$10.00.
- E. 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 Blue Mountain Networks' physical recovery of the Blue Mountain 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 Blue Mountain Networks shall have no legal effect.
- F. Blue Mountain Networks may suspend Service or terminate my Services for any reason. I understand that if Blue Mountain Networks suspends Service or terminates my Services, Blue Mountain Networks will give such notice as provided by applicable law, if any. I understand that if Blue Mountain Networks suspends Service or terminate Service, for a reason other than my violation of BMN Terms and Conditions of Service, all applicable fees and charges will accrue until the date of suspension or termination, but we will prorate all monthly service fees charged for Services after the date of termination (less any outstanding amounts due Blue Mountain Networks for the Services, affiliate services, equipment, or other applicable fees and charges). I understand and acknowledge that all Blue Mountain Networks VoIP Service, including 911/E911, will be disabled because of termination of my account.

## **12. Disclaimer of Warranty and Limitation of Liability**

- A. I AGREE THAT THE SERVICES ARE PROVIDED BY BLUE MOUNTAIN 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. BLUE MOUNTAIN NETWORKS MAKES NO WARRANTY THAT THE SERVICES WILL BE

UNINTERRUPTED OR ERROR FREE OR THAT THE BLUE MOUNTAIN 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 BLUE MOUNTAIN 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.

a. WITHOUT LIMITING THE FOREGOING:

- i. ANY AND ALL PRODUCTS AND SERVICES PROVIDED BY BLUE MOUNTAIN NETWORKS AND/OR ANY LONG DISTANCE PROVIDER TO ME THAT ARE NOT PART OF THE SERVICES AS DEFINED HEREIN ARE OUTSIDE THE SCOPE OF THESE TERMS AND CONDITIONS OF SERVICE AND THE BLUE MOUNTAIN NETWORKS PARTIES HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY SUCH PRODUCTS OR SERVICES; AND
- ii. NONE OF THE BLUE MOUNTAIN NETWORKS PARTIES MAKES ANY WARRANTIES AS TO THE SECURITY OF MY COMMUNICATIONS VIA BLUE MOUNTAIN NETWORKS' 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 BLUE MOUNTAIN 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 BLUE MOUNTAIN NETWORKS OR MY INSTALLATION, USE, INSPECTION, MAINTENANCE, REPAIR, REPLACEMENT OR REMOVAL OF THE SERVICES, BLUE MOUNTAIN 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 BLUE MOUNTAIN 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, IN NO EVENT (INCLUDING NEGLIGENCE) WILL ANY BLUE MOUNTAIN 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 BY BLUE MOUNTAIN NETWORKS TO PROTECT THE SERVICES OR THE BREACH BY BLUE MOUNTAIN 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, BLUE MOUNTAIN NETWORKS.
- E. I UNDERSTAND THE LIMITATIONS IN THIS SECTION SHALL APPLY WHERE BLUE MOUNTAIN 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 BLUE MOUNTAIN 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 BLUE MOUNTAIN 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 BLUE MOUNTAIN 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 Statement

- 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 Statement delivered to me by Blue Mountain Networks and available online at [www.bluemountainnet.com](http://www.bluemountainnet.com). I acknowledge receipt of the Subscriber Privacy Statement, which is deemed to form a part of these Terms and Conditions of Service 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 BMN Terms and Conditions of Service, Blue Mountain 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 Blue Mountain Networks's 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 Blue Mountain Networks's 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 Blue Mountain Networks remove this information from one or more of these Services, I understand that I may notify Blue Mountain Networks to do so, subject to any applicable fees.

#### **14. Consent to Phone and Email Contact**

- A. I consent to Blue Mountain 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 Blue Mountain Networks's phone marketing list. I can make this request by emailing or writing my local Blue Mountain Networks office and asking to be placed on Blue Mountain 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 Blue Mountain Networks phone marketing list as my inquiry or subscription to Blue Mountain Networks services has added me to the BMN phone marketing list.
- C. I consent to Blue Mountain Networks emailing me, at any email address, including that of a wireless or mobile device, that I provide to Blue Mountain Networks (or that Blue Mountain Networks issues to me), for any purpose, including the marketing of Blue Mountain Networks 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 Blue Mountain 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 MY BMN SERVICE(S) 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 THESE TERMS AND CONDITIONS OF SERVICE 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 THESE TERMS AND CONDITIONS OF SERVICE 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 THESE TERMS AND CONDITIONS OF SERVICE, YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD BLUE MOUNTAIN NETWORKS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AFFILIATES, ITS/THEIR AGENTS, AND ANY OTHER PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THESE TERMS AND CONDITIONS OF SERVICE, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO OR ARISING OUT OF YOU OR YOUR USERS' USE OF THE SERVICES OR ANY BLUE MOUNTAIN 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. UNDER THESE TERMS AND CONDITIONS OF SERVICE, YOU AGREE THAT BLUE MOUNTAIN NETWORKS SHALL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY CLAIMS AGAINST US THAT ARISE FROM YOUR USE OF THE SERVICES OR THE BLUE MOUNTAIN 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 Blue Mountain Networks's Local Telephone Service or VoIP Service from another service provider, I may transfer my existing phone number (if any) to Blue Mountain Networks's Local Telephone Service or VoIP Service, provided that: (i) I request the phone number transfer when I place my order for Blue Mountain 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 Blue Mountain Networks's Local Telephone Service or VoIP Service would not, in Blue Mountain Networks's view, violate applicable law or Blue Mountain Networks's processes and procedures; (iv) when applicable, I acknowledge and agree that if my ATA 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 ATA. 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 Blue Mountain 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 ATA 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 ATA 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. Blue Mountain Networks will provide me with an estimate of the Port Effective Date at the time of service ordering or via email following my completion of the ordering process.

- B. I understand that in order to transfer my phone number from Blue Mountain 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 Blue Mountain Networks). I understand that Blue Mountain 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**

These Terms and Conditions of Service are, and shall be interpreted as, subject to applicable law and regulation and to any applicable franchise agreement between a governmental authority and Blue Mountain Networks. In the event that any portion of these Terms and Conditions of Service are 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 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 Blue Mountain Networks by such means as Blue Mountain Networks shall determine at its discretion. Without limiting the foregoing, I agree that Blue Mountain Networks may provide any notices required or contemplated hereunder or by applicable law, including

notice of changes to Service, the Price List(s), the Terms and Conditions of Service or the Privacy Statement, by electronic means (for example, email or online posting). An online version of these Terms and Conditions of Service, the Privacy Statement, Acceptable Use Policy and any applicable Price List(s), as so changed from time to time, will be accessible at [www.bluemountainnet.com](http://www.bluemountainnet.com) or another online location designated by Blue Mountain Networks, or can be obtained by calling my local Blue Mountain Networks office.

## **20. Assignment**

I understand that my Services are being provided only to the location identified on my Work Order and that I am not allowed to transfer all or any portion of the Services, or Blue Mountain Networks's Equipment, to any other person, entity or location, including a new residence. Blue Mountain Networks may transfer or assign any portion or all of these Terms and Conditions of Service, 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**

The Work Order and the Terms and Conditions of Service 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 these Terms and Conditions of Service, the Work Order or the Privacy Statement 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 of this document, the Work Order, Acceptable Use Policy or the Privacy Statement, 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 the Work Order, the Privacy Policy or the Terms and Conditions of Service. 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 document, the Work Order or the Privacy Policy or the Acceptable Use Policy only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in this document, nothing contained in the Terms and Conditions of Service shall constitute a waiver by me or Blue Mountain 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. Parental Control Device**

I acknowledge that I have been advised of the availability of Blue Mountain Networks's parental control devices which can filter or block certain programming. Additional information about the device is available at the Blue Mountain Networks contact number in the Subscriber Materials.

## **23. Conflicting Terms**

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