

**T5 TELECOM, INC.**  
**TERMS AND CONDITIONS**

**1. SERVICES.** T5 Telecom, Inc. ("T5") agrees to provide the Services (as defined in the Order Form), in accordance with any effective tariffs that may be revised from time to time. For Services not provided in whole or part pursuant to a Tariff (the "Tariff"), such Services shall be provided in accordance with the terms and conditions of this Agreement. These Services are retail service and are not for resale or distribution by Customer. These Standard Terms and Conditions supplement any effective terms and conditions set out in the applicable Tariffs and the Service price lists.

**2. RESTRICTIONS.**

- A. Applicable Laws. Customer shall only use the Services for lawful purposes, in compliance with all applicable laws including, without limitation, copyright, trademark, obscenity, defamation laws, the federal Telephone Consumer Protection Act and other laws or regulations pertaining to "do not call" lists or registries. To comply with applicable laws and lawful government requests, to operate its Services properly, or to protect itself or its account holders, T5 reserves the right to disclose account holders' names and other registration and identification information. T5 will fully cooperate with law enforcement authorities in investigating suspected lawbreakers, and reserves the right to report to such authorities any suspect activity if which it becomes aware. T5 reserves the sole right to authorize the use of auto-dialers. In the absence of written authorization and terms, which T5 may specify, the use of auto-dialers in conjunction with T5 VoIP services is strictly prohibited. Outside the use of auto-dialers, which are addressed above, T5 reserves the right to discontinue furnishing Service if Customer's usage, in T5's sole discretion, is deemed not to be that of an expressly authorized application.
- B. Excessive Usage. T5 reserves the right to notify Customer if and to the extent that T5 determines that their VoIP usage is showing improper usage patterns. Improper usage patterns may include but are not limited to calling patterns where Customer's ratio of inbound to outbound call minutes exceed 80% of Customer's aggregate minutes, or Customer's aggregate minutes of usage per month per Seat/Line in an order exceeds 4,000 minutes regardless of the purchased service plans. Aggregate minutes are calculated by adding all of Customer's inbound and outbound minutes of usage on a monthly basis. T5 reserves the right to, at its sole discretion, terminate the Service or convert the Service to an appropriate measured calling plan where improper usage patterns are identified. Notwithstanding the foregoing, T5 has no obligation to monitor the Service for improper usage patterns.
- C. Resale. The Services are to be used exclusively for the benefit of Customer. Customer may not share, resell or allow the use of Services, in whole or in part, by any third party, including but not limited to other providers of computer or communications services. Services may not be used to originate or terminate traffic associated with any switched service obtained from a third party.

**3. RATES AND PRICING.**

- A. Rates. Customer is being provided each Service reflected in the Order Form, at the charges, recurring and nonrecurring, stated on the Order Form, as applicable, as specified for the specific Service. Billed charges will include in addition to the rate: any non-recurring charges; governmental taxes; tax and tax-related surcharges, including ad valorem taxes or surcharges; governmental fees or assessments, including surcharges and fees established or assessed by government, applicable operator assistance charges, any local loop or Premise Access charges, and any charges of third parties required by Customer's Services which are passed through to Customer; each of which shall be payable by Customer.
- B. Rate Increase. If T5 increases rates on any Service (excluding surcharges and fees) under this Agreement for any location covered by this Agreement, the Customer has up to ninety (90) days from the earlier of its receipt of the first invoice reflecting the rate increase, or prior written notification, if any, of such rate increase to elect (by written notice to T5 or by telephone notice by contacting T5 Customer Service subject to recorded Third Party Verification) to either: (i) migrate the Services to another T5 provided service, (ii) negotiate a new Agreement with T5, or (iii) accept the rate increase, in which case this Agreement will continue to govern for all locations. Failure to provide such notice within such ninety (90) day period shall be deemed Customer's acceptance of the rate increase.

- C. Termination Due to Rate Increase. In the event the Customer elects to terminate its service with T5 at each or any of the locations affected by a rate increase, this Agreement shall nonetheless continue in full force and effect for all other locations covered by this Agreement which were not affected by the rate increase. If any legal authority such as Federal, State, Local or supplier changes, modifies, repeals, or initiates any rules, orders, tariffs, or other legal requirements that impact T5's ability to maintain this Agreement in whole or in part and in T5's sole determination, T5 may terminate this Agreement without any liability to T5.

**4. QUALITY ASSURANCE.** If Customer faces continuing Service problems or is dissatisfied with T5's network quality, Customer may notify T5 of such dissatisfaction in writing or by suitable electronic communication and as its exclusive remedy Customer has the option to move the lines at the Location affected by the Service problems to another provider with no termination fee, except third party charges and the installation cost of dedicated circuits, subject to payment of all charges currently unpaid, if: (i) the problem is not caused by Customer or its representatives or vendors and is attributable solely to facilities, Services or causes within T5's reasonable control; (ii) T5 is unable to resolve a covered problem to Customer's reasonable satisfaction within thirty (30) days after receipt of Customer's notice; and (iii) Customer's account with T5 is current (i.e., there is no outstanding balance older than thirty (30) days) at the time of cancellation. The Customer must send T5 written notification that they intend to move the lines to another provider. The notice shall be sent to T5, Inc., Attention Contract Administration at 1596 Buttrick Ave SE, Ada, MI 49301. The remaining lines continue in force and are subject to the terms and conditions of this Agreement.

## 5. OBLIGATION TO PAY.

- A. Payment. Customer is responsible for payment of all charges incurred in connection with Services furnished to Customer's number, network addresses and authorization codes. T5 will invoice Customer once a month, for usage and other charges related to the Services. T5 will make Call Detail Records (CDRs) available online for all locations where T5 is the service provider, and the local phone switch is able to provide CDRs. The CDRs will include detail for Local, Local Toll and Long Distance calls. The due date for payment is indicated on the invoice and payment must be received on or before the due date.
- B. Disputes. All billing disputes must be received by T5 in writing within thirty (30) days of the invoice date, and to be effective, must be made in good faith, with an a detailed itemization of the nature and amount of the dispute, and with Customer timely paying all undisputed amounts. Invoiced amounts not timely and appropriately disputed are final.
- C. Delinquent Balances. Delinquent balances will be assessed a one and one-half percent (1.50%) per month interest delinquency charge, not to exceed the maximum amount permitted by law plus all expenses incurred by T5, including attorney fees. If T5 exercises it's right to terminated or suspend the Services under Section 7(a) below, a reactivation fee of \$30.00 per Virtual Number or VoIP seat to reactivate accounts suspended for non-payment. Customers suspended or cancelled due to non-payment may be required to give a deposit or be placed on recurring payment by credit card or electronic debit before being reactivated or reinstated.

## 6. TERM AND TERMINATION.

- A. Term. Customer commits to purchasing and paying for the Services for the minimum term stated in the Order Form (the "Initial term"). The Initial Term shall commence as of the first billing cycle during which Services are provided to Customer. After the Initial Term and any successor term (Term), **this Agreement will renew automatically for a term equal to that of the Initial Term unless either party provides written notice of cancellation to the address listed below (in the case of notice from Customer) at least thirty (30) days (but not prior to one hundred eighty (180) days) before the new Term commences.**
- B. Notice. To insure accurate billing of services, it is the customer's responsibility to notify T5 when any services that are provided by T5 are to be discontinued. Customer is responsible for the full payment of all services until the date the notification is provided to and received by T5, or the actual date the service provided by T5 is discontinued, whichever is later. All written termination notices, or for non-renewal of a term plan, must be sent to: "T5 Telecom, Inc., Attention Contract Administration, 1596 Buttrick Ave SE, Ada, MI 49301".
- C. Termination for Nonpayment. Where Customer's failure to pay fees on a timely basis results in a

termination of services, such termination shall be deemed a termination by Customer, and Customer shall be liable to pay T5 any cancellation charges incurred by T5 from other service providers and 100% of scheduled monthly recurring charges due under this Agreement through the scheduled termination date of the Agreement, as if an early termination had not occurred.

- D. Holdover. If Customer provides a notice of cancellation and continues to use a Service beyond the expiration date of the Term, the rates and charges applicable to Customer will be automatically converted to a month-to-month pricing plan.
- E. Early Termination. Either party to this Agreement is permitted to terminate this Agreement upon providing written notice of such intent no less than thirty (30) days prior to the date of termination. If this Agreement is cancelled prior to expiration of the Initial Term or the then current term either (I) by T5 for Customer's default or (II) by Customer except in accordance with the terms and policies stated in this Agreement, Customer is liable for a termination fee ("Termination Fee") equal to the sum of (a) one month's recurring charges per the terms found in the Order Form; (b) any cancellation charges from third parties through T5; and (c) any applicable governmental program charges. Customer agrees that the Termination Fee and the cancellation charges each are based on an agreed term commitment by Customer, are reasonable, and are not a penalty. Customer is responsible for any termination fees, commitment fees or penalties that may be assessed to Customer by any predecessor carrier that was utilized by Customer prior to obtaining service from T5.

## 7. DEFAULT.

- A. Customer's Default. If Customer (I) fails to pay any outstanding charges within five (5) days after written notice of delinquency (including a past due invoice), or (II) fails to comply with any other material term or condition of this Agreement or (III) fails to cure any other breach of this agreement within thirty (30) days after receipt of notice of such breach from T5, Customer shall be in default and T5 may, at its option, take any or all of the following actions: (a) terminate the Services or any portion thereof; (b) temporarily suspend or block the Services; (c) remove Customer and Customer's equipment from T5 facilities and locations; (d) commence action to collect all sums then due or that subsequently become due to T5; (e) require a deposit; (f) repossess T5 equipment from Customer's location(s) and (g) take any additional steps permitted by law. In the event of termination, Customer shall be liable for all charges incurred as of the termination date, and for such additional charges and fees set out in this Agreement.
- B. T5's Default. If T5 fails to comply with any material term or condition of this Agreement, and fails to cure its breach of any materials term or condition of this Agreement within thirty (30) days after T5's receipt of notice from Customer of such breach, Customer may terminate the Service, which is the subject of such failure or non-observance. The Customer shall have no further obligation to T5 for payment of charges (except for the continued use charges) for the terminated circuit or Service. Except as otherwise provided herein, this subsection states Customer's exclusive remedy for a breach by T5.
- C. Litigation. In the event T5 initiates litigation under this Agreement, Customer shall be responsible for the reasonable attorney's fees and other costs of collection incurred by T5, unless Customer prevails in such litigation.

**8. EMERGENCY SERVICES 911 AND E911 CALLING.** Customer acknowledges and understands that the Service may not support traditional 911 or E911 access to emergency services. Customer may not be able to use the Service, IP Phones or CPE and Other Equipment to call for emergency assistance by dialing 911. 911 or E911 calls may be routed to the nearest Public Safety Answering Point office (PSAP). Typically, these calls are answered by the front desk of the PSAP and then routed to an emergency operator at that location. However, some PSAPs will not accept calls in this manner as the following may occur: (a) calls may not connect to the PSAP, or may improperly ring to the administrative line of the PSAP, which may not be staffed after hours, or by trained 911 operators; (b) calls may correctly connect to the PSAP, but not automatically transmit the user's phone number and/or location information; or (c) calls may fail or be delayed on account of a number of circumstances that may include, but not be limited to, the following: (i) Customer uses the Service with equipment other than T5 provided or approved equipment; (ii) Customer calls from a location other than the single location where T5 installed Customer's Service; (iii) Customer's router does not have the necessary configuration; (iv) Customer's Service fails for any reason (including without limitation, power outage, Internet connection is down or interrupted, equipment malfunctions, or any Service outage including a Service outage caused by suspension or termination of

Customer's Service); (v) maintenance work is being performed; (vi) Customer's equipment, phones, Internet connectivity router, integrated access device, customer premises routers and switches, or IP enabled devices used with the Service fail; (vii) Customer's voice and data networks/equipment or premises environment fail; (viii) Customer's area does not have 911 service; (ix) Customer calls from outside the United States; (x) Customer uses a telephone number that is from a geographic area other than Customer's Service location (outside of Customer's native rate center); (xi) there is network congestion, radio interference, weak wireless signals or other causes of reduced Internet access service performance; or (xii) Service has not been installed for 30 days (collectively, the Limitations). Customer agrees to notify, as appropriate, any of its users of the Service who may place calls using Customer's phone services of the foregoing Limitations. T5 recommends Customer maintain an alternate means of accessing Emergency Services, such as traditional services or cellular phone services. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT THESE 9-1-1 SERVICE LIMITATIONS ARE APPLICABLE TO THE SERVICE. BY ACCEPTING THESE TERMS, THE CUSTOMER ACCEPTS THE SERVICE ON THESE TERMS, AND HEREBY WAIVES, AND SHALL INDEMNIFY T5 WITH RESPECT TO, ANY AND ALL CLAIMS OR CAUSES OF ACTION AGAINST T5, ITS AFFILIATES, UNDERLYING CARRIERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS, LICENSORS, AND SUPPLIERS ARISING FROM OR RELATING TO THE LIMITATIONS, INCLUDING THOSE BASED ON PERSONAL INJURY OR EVEN DEATH ALLEGED TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE LIMITATIONS.

## **9. SPECIFIC NON-VOICE SERVICE REQUIREMENTS.**

- A. Notice of Non-Voice Systems. Customer shall identify to T5 any and all non-voice systems, including modem use (e.g. point of sale devices), facsimile and security systems, and any changes in the configuration of such systems during the term of this Agreement, as such systems may require special handling. Customer acknowledges that the Service may not be available for use with such systems, either initially or after a change in configuration, because the Service may not be equipped to function with such systems. Customer waives any claim against T5 for the Service being unavailable for use with such systems, either initially or after a change in the configuration of such systems.
- B. Hardware Responsibilities. Upon deployment of T5 VoIP services, T5 or its suppliers may deliver to the Customer certain hardware products such as Analog Telephone Adaptors or Integrated Access Devices to facilitate interconnectivity with Customer provided facsimile devices, point of sale devices, modems and non-emergency monitoring devices. T5's installation responsibilities shall be limited to establishing connectivity between the T5 provided equipment and the T5 VoIP network. The provisioning and compatibility of these devices are provided on a best effort basis. T5 does not guarantee the interoperability with such Customer provided equipment nor shall T5 be responsible for the operation or maintenance of any Customer provided equipment. In addition to the devices mentioned above, many types of non-voice communications equipment, including but not limited to, security / alarm systems that are set up to make automatic phone calls, elevator phones, medical monitoring devices, pool phones or other critical monitoring devices, have not been certified to be compatible with VoIP services and are thus strictly prohibited unless agreed to in writing. Customer waives any claim against T5 for interference with, or disruption of such systems.

**10. LOSS OF SERVICE DUE TO POWER FAILURE OR INTERNET SERVICE OUTAGE.** Customer acknowledges and understands that the Service does not function in the event of a power failure. Should there be an interruption in the power supply, the Service will not function until power is restored and may require the Customer to reset or reconfigure the CPE, IP Phones or Other Equipment. Customer also acknowledges and understands that the service requires a fully functioning broadband connection to the Internet and that in the event of an outage the Service will not function until the Internet connection is restored.

**11. FRAUDULENT CALLS.** In connection with Customer's use of the Services, Customer is solely responsible for all security measures with respect to the prevention of any unauthorized use of the Services, including, but not limited to, the selection, implementation or maintenance of such security measures and safeguarding all information related thereto (together, the Security Measures). T5 shall have no liability or obligation in any way with respect to such Security Measures. Furthermore, the parties hereto acknowledge and agree that Customer is exclusively responsible for the confidentiality and protection of any account information, including, but not limited to, passwords or other security related information (together, Security Information) and any unauthorized access to Customer accounts by way of the use of such Security Information. T5 shall have no liability or obligation in any way with respect to such Security Information. Customer shall indemnify and hold T5 harmless from all costs, expenses, claims or actions, whether direct or indirect, in connection with or arising out of Customer's failure to take such Security Measures or failure to protect such Security Information. Customer shall be solely

responsible for payment of long distance, toll and other telecommunications charges incurred through use of the Services being provided hereunder. Customer shall not be excused from paying T5 for Services provided to Customer that are the result of a failure by the Customer to maintain the Security Measures or protect the Security Information as set forth herein. In the event T5 discovers a failure by Customer to maintain the Security Measures or protect the Security Information, T5 may, but shall not be obligated to, take immediate action, with or without notice to Customer, that is reasonably necessary, in T5's sole and absolute discretion, to address the failed Security Measures and/or breach of Security Information. Notwithstanding anything to the contrary contained herein, it is understood that T5 is under no obligation to investigate the authenticity of calls charged to Customer's account and shall not be liable for any fraudulent or unauthorized calls processed by T5 and billed to Customer's account.

**12. MULTIPLE USERS.** Customer acknowledges that Customer is executing this Agreement on behalf of all persons who use the Service and/or T5 Equipment through Customer's computer(s), phone systems, PBXs and other telecommunications equipment. Customer shall have sole responsibility for ensuring that all such other users understand and comply with the terms and conditions of this Agreement. Customer further acknowledges and agrees that Customer is solely responsible and liable for any and all breaches of the terms and conditions of this Agreement whether such breach is the result of use of the Service and/or the T5 Equipment by Customer or any other user of Customer's computer(s), phone systems, PBXs and other telecommunications equipment. Customer agrees to indemnify, defend and hold harmless T5 against all claims and expenses (including reasonable attorneys' fees) arising out of the use of the Service and/or T5 Equipment by any other user of Customer's computer(s), phone systems, PBXs and other telecommunications equipment.

**13. ACCESS TO CUSTOMER'S PREMISES.** Customer authorizes T5 and its employees, agents, contractors and representatives to enter Customer's premises (the Premises) to install, maintain, inspect, alter, repair and remove any T5 provided equipment. All such services shall be conducted at a time agreed to with Customer. If Customer is not the owner of the Premises, upon T5's request Customer shall supply T5 with the owner's name and address, evidence that the Customer is authorized to grant access to the Premises on the owner's behalf, and (if needed) written consent from the owner of the Premises. Customer also grants its consent to T5 to contact such owner for the purpose of entering into one or more Right of Access and/or Site Lease(s). If Customer does not provide access as provided herein, T5 shall, at its option, a) declare the full amount for the entire term due and payable immediately, or b) elect to terminate this agreement.

**14. NON-RECOMMENDED CONFIGURATION.** T5 has informed Customer of the recommended minimum requirements, if any, (the Minimum Requirements) for efficiently operating the Service. If Customer allows the installation of the Service utilizing hardware that does not meet the Minimum Requirements (a Non-recommended Configuration), Customer agrees that (i) Customer shall not be entitled to Customer support relating to any issues other than the quality of the signal delivered to Customer's IP phone or media converter, and (ii) the following limitations of liability shall apply: T5 DOES NOT REPRESENT OR WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE CUSTOMER TO SUCCESSFULLY ACCESS, OPERATE OR USE THE SERVICE, NOT THAT ANY SUCH INSTALLATION WILL NOT CAUSE DAMAGE TO THE CUSTOMER'S EQUIPMENT, PERIPHERALS, SOFTWARE OR DATA. T5 DOES NOT ASSUME ANY LIABILITY WHATSOEVER FOR ANY DAMAGE OR FAILURE TO INSTALL, ACCESS OR USE THE SERVICE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement

**15. T5 PROVIDED EQUIPMENT.**

- A. Required Equipment. In order to facilitate configuration of equipment and ensure its compatibility with T5's network, T5 reserves the right to require Customer, as a condition to receiving Service, to use customer premise equipment ("CPE") supplied by T5. CPE may include, but is not limited to; IP phones, cordless / wireless / WiFi phones, Network security device, Router, Modem, Analog Telephone Adapter, Network switch, wireless modem, wireless antenna, fixed wireless low noise amplifier; or any other IP connection Equipment, ("Equipment") provided to Customer.
- B. Purchased Equipment. Such CPE may be purchased by Customer, included as part of a monthly subscription as defined by the Order Form and carries a Monthly Recurring Revenue price, or T5 may rent CPE to Customer at T5's option. If Customer purchases the CPE, title shall remain with T5 until Customer has paid the full purchase price associated with such CPE (as indicated on the Order Form). With the exception of specified CPE items, customer shall bear the cost of any loss or damage to the CPE from any cause whatsoever, until the purchase price is paid in full unless the CPE is still covered by the manufacturers warranty. Customer acknowledges that it has sole and complete responsibility to

maintain physical, logical and environmental security and control with respect to all Equipment, and T5 shall have no liability whatsoever with respect to any breach of security caused by, related to, or arising out of Customer's failure to maintain proper physical, logical or environmental security with respect to any Equipment. Unless and until purchased, the Equipment is, and at all times shall remain, the sole and exclusive property of T5, and Customer shall have no right, title or interest therein, except as set forth by this Agreement. Except as described in this Agreement, Customer has no right to purchase or otherwise acquire title to or ownership of any of the Equipment or property of this Agreement no matter that the Equipment or any part thereof may now be, or hereafter become, attached or affixed to real property or any improvements thereon.

- C. Return of Equipment. Unless Equipment is fully paid for, Customer, upon the termination or expiration of this Agreement, shall return, at its sole cost, the Equipment in good repair and condition (normal wear and tear excepted) to T5.
- D. Ownership of Rented Equipment. If T5 agrees to rent the CPE to Company (as indicated on the Order Form), then T5 shall retain title to the CPE and Customer agrees to use reasonable care in maintaining the CPE while in Customer's possession. Upon the expiration or termination of the Services, rented CPE shall be returned to T5 by Customer (and at Customer's expense) in good condition, reasonable wear and tear excepted.
- E. Insurance on Equipment. Customer shall maintain adequate insurance on the Equipment to insure against damage to or loss of the Equipment.
- F. Charges Upon Termination. Customer's account will be charged for the Equipment as soon as notification of cancellation or early termination of service is provided. If equipment is returned prior to 90 days after the cancellation or early termination date, T5 will issue Customer a full credit for the equipment charge. Equipment returned after 90 days is subject to a restocking fee. The restocking fee will be based on the fair market value of the provided equipment.
- G. Warranty for Rented Equipment. For Equipment that is rented from T5, T5 will warrant the Equipment for the duration of the term of this Agreement. Should any of the Equipment require maintenance service, T5 will solely determine whether to replace the unit in whole or repair the malfunctioning unit(s). In the event T5 selects to repair damaged Equipment, replacement parts provided will be either new parts or parts equivalent in performance to new parts. Parts removed from CPE for replacement will become the property of T5.
- H. Exclusions to Warranty of Rented Equipment. T5 repair and replacement obligations do not cover any of the following: (i) electrical work external to the T5 Equipment; (ii) repair or replacement of damage to or defects in the Equipment resulting from causes external to the Equipment, including disaster, fire, accident, neglect, misuse, vandalism, water, power surges, or lightning; or resulting from use of the Equipment for other than intended purposes; or use of the Equipment with items not provided or approved by T5; or resulting from the performance of maintenance or the attempted repair of an item of T5 Equipment by persons other than T5 authorized personnel; (iii) furnishing supplies or accessories, or painting or refinishing the Equipment; (iv) Services in connection with the relocation of the Equipment or the addition or removal of items of equipment or parts, attachments, features, from or to other devices not furnished by T5, including communications devices, video devices, audio devices, networks or links; and (v) Services in connection with computer viruses or conflicts involving software that is not installed or introduced by T5.

**16. RETURNS.** All hardware, such as telephones, firewalls, routers, switches and terminal adapters must be certified for the T5 network. Any equipment purchased from or included in a packaged offering which is returned for replacement or credit, for any reason, must include (i) proof of purchase and original packaging; (ii) the contents are undamaged and in original condition, reasonable wear and tear excluded; (iii) all parts, accessories, documentation and packaging materials are returned; and (iv) equipment is returned with a valid return authorization number obtained from T5 customer support department. You are responsible for the cost and risk of return shipping of equipment. If you receive packages and/or Equipment that is visibly damaged, you must note the damage on the carrier's freight bill or receipt and keep a copy. In such event, you must keep the original packaging, all packing materials and parts intact in the same condition in which they were received from the carrier and contact T5 customer support department immediately. To obtain a return authorization number, you must contact T5 customer support department at 616-828-0997 or email support@t5tele.com.

**17. WARRANTIES AND LIMITATION OF LIABILITY.** T5 DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ITS FACILITIES, TRANSMISSION, EQUIPMENT, DATA OR SERVICE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FUNCTION LIMITATION OF LIABILITY. THE ENTIRE LIABILITY OF T5 FOR ALL CLAIMS OF WHATEVER NATURE ARISING OUT OF ITS PROVISION OF FACILITIES, TRANSMISSION, DATA, SERVICE OR EQUIPMENT, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE CORRESPONDING PROPORTION OF THE MONTHLY RECURRING CHARGES TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH ANY MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT (OR ANY OTHER EVENT OR ACTION GIVING RISE TO A CLAIM) OCCURS WITH RESPECT TO ANY TARIFFED SERVICE. EXCEPT FOR A REFUND OF ACTUAL CHARGES PAID FOR A NUMBER ASSIGNMENT, PUBLICATION, LISTING OR ADVERTISEMENT (OR WHERE LIABILITY CANNOT BE DISCLAIMED AS A MATTER OF LAW) T5 SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY THIRD PARTY WITH RESPECT TO ANY DISCONTINUANCE OR CHANGE OF ANY NUMBER. IN NO EVENT SHALL T5 BE LIABLE FOR SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUE, PROFITS OR OTHER BENEFIT. T5 IS NOT LIABLE FOR ANY ACT OR OMISSION OF ANY OTHER PERSON OR PERSONS FURNISHING ANY PART OF THE SERVICE(S). THE REMEDIES SET OUT IN THIS AGREEMENT ARE THE EXCLUSIVE REMEDIES AVAILABLE TO THE PARTIES

**18. FORCE MAJEURE.** T5 shall not be liable under this Agreement to Customer for delays, failures to perform, damage, loss destruction of malfunction of any equipment, or any consequence caused by, or due to fire, earthquake, flood, water, natural disaster, third party labor disputes, utility curtailments, power failures, explosions, civil disturbances, governmental actions, third party shortages of equipment or supplies, unavailability of transportations, acts or omissions of third parties, or any other cause beyond its reasonable control.

**19. RISK OF LOSS.** At all times, you will bear the risk of any loss, damage or destruction of your assets, or equipment or property provided or maintained by T5 from fire, storm, power surge, water damage, theft or other casualty. You will be solely responsible for insuring your property and filing insurance claims for losses associated therewith. If T5 is aware of loss or casualty to your property, T5 will immediately notify you, stating the extent of loss or damage incurred and the cause, if known.

**20. CONFIDENTIAL INFORMATION.** Customer agrees that it will not affirmatively disseminate or disclose any of the material terms and condition of this Agreement or the Order Form, other than those terms and conditions that are made available to the public by applicable law or regulation, except for that information that is or becomes known or available publicly without any violation of this Agreement, is obtained through a third party without any obligation of confidentiality, or is disclosed pursuant to law or legal process, or is disclosed with permission of the other party.

**21. INDEMNIFICATION.** You agree to indemnify, defend, and hold T5 harmless, as well as its subsidiaries, affiliates, officers, directors, employees, agents, licensors, consultants, suppliers, and any third-party Web site provider, from and against all claims, demands, actions, liabilities, losses, expenses, damages, judgments and costs, including attorneys' fees, resulting from your violation of this Agreement, misuse or abuse of the Service, or infringement thereof by you or users of your account. T5 reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you. You must not in any event accept a settlement of any dispute relating to this contract without prior written consent of T5.

**22. APPLICABLE LAW AND JURISDICTION.** This Agreement shall be governed for all purposes by the laws of the State of Michigan without regard to its principles regarding conflicts of laws. Any legal action or proceeding with respect to this Agreement may be brought in the courts of the State of Michigan sitting in Kent County or of the United States for the Western District of Michigan, and, by execution and delivery of this Agreement, each party irrevocably accepts for itself the jurisdiction of such courts.

**23. SEVERABILITY.** The unenforceability of any provision of this Agreement shall not affect the enforceability of the remaining provisions of this Agreement. In the event any provision of this Agreement is found to be invalid or unenforceable in any manner, that provision shall be deemed amended in as minimal a manner as possible so as to make the provision valid and enforceable.

**24. ASSIGNMENT.** You may not assign or delegate this Agreement or any of its rights or duties under this Agreement.

**25. ENTIRE AGREEMENT.** This Agreement, and any agreement to which it refers, contain all the terms of the

agreement between the parties with respect to their subject matter.

**26. AMENDMENT; CONTINUED ACCEPTANCE.** You understand that the terms of this Agreement may be amended at the sole discretion of T5, and by accepting this Agreement, you agree to abide by all such amendments. Amendments shall be binding immediately after notification is released. The continuation of the Services or your payment of any invoice after any amendments are made shall constitute your acceptance of any and all amendments. You agree that you may not amend the terms of this Agreement without prior written and signed consent from T5.

**27. MUTUALLY DRAFTED.** The parties acknowledge that this Agreement has been mutually drafted by the parties and that the construction or interpretation of this Agreement shall not be more favorably or less favorably received for one party over the other.

**28. WAIVER.** Any failure by a party to enforce a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any claim of breach of this Agreement. Every right, remedy, and power granted to any party by this Agreement or allowed it by law shall be cumulative and not exclusive of any other.

**29. INTERPRETATION.** Where appropriate in this Agreement, words used in the singular shall include the plural, and words used in the masculine shall include the masculine, feminine, and neuter.

**30. NOTICE.** All notices required to be sent pursuant to this Agreement shall be personally delivered or mailed by certified or registered mail to the addresses of the Parties indicated in the Order Form. Notice of a Party's change of address shall be mailed by first class mail to the other Party's registered office.

**31. RELIANCE.** Each party acknowledges that it has had full opportunity to consult with such legal and financial advisors as it has deemed necessary or advisable in connection with its decision knowingly to enter into this Agreement. Neither party has executed this Agreement in reliance on any representations, warranties or statements that the other party has made, other than as made under this Agreement.

**32. INCORPORATION.** The Parties agree that the provisions and terms stated in the Order Form are fully incorporated into the terms of this Agreement as if they were fully stated herein.