

Diodecom Wireless HSI Service Agreement

THIS Diodecom Wireless HSI SERVICE AGREEMENT ("Agreement") is made and entered into as of the date signed below, (the "Effective Date") between DIODE COMMUNICATIONS ("Diode"), a Nebraska corporation, and CUSTOMER as referenced below ("Customer").

IN CONSIDERATION OF the mutual covenants and agreements set forth herein, the parties agree as follows:

1. **Service.** Pursuant to this Agreement, Customer agrees to purchase Diodecom Wireless HSI Service ("Service") from Diode as noted above provided such Service is available from Diode in Customer's service territory. The service may be provided either by Diode or by Diode's third party vendors or contractors and Diode reserves the right to change or modify the source of any Service provided to Customer at any time without notice. (Customer shall be responsible for obtaining and maintaining any computer equipment needed to access, connect to, or use such Service.) Service provided by Diode under this Agreement is for the sole use of Customer only and shall not be resold, assigned or otherwise transferred, directly or indirectly. Diode shall retain ownership of reception equipment located at or on customer's premises. Diode retains the right to refuse service to any person or entity.

2. **Term.** This Agreement shall commence as of the Effective Date and shall remain in full force and effect for a period equal to the minimum term of agreement as (shown on Exhibit A as attached ("Initial Term")) unless terminated pursuant to Section 5 herein. Upon the expiration of the Initial Term, the Agreement shall continue in full force and effect on a month to month basis until superseded by the subsequent agreement between the parties, or until terminated pursuant to Section 5 herein, without prior notice to customer.

3. **Charges for Service.** Customer shall pay all charges applicable to Customer's account, and any taxes, fees, surcharges and assessments imposed from time to time in connection with the Service.

4. **Billing and Payment.** Diode will bill Customer monthly for all charges associated with the Services and Equipment. Billing cycle shall consist of customer being billed each month at the first day of the month and payments credited for current month of service. (e.g.-bill on July 1 received by customer, customer pays July 10, month of July paid in full.) Payment in full is due no later than the due date indicated on Customer's bill. If payment is not received by Diode within five (5) days from the date payment is due, Customer's account shall be considered delinquent and shall be subject to a late payment fee of 1.33% per month on the outstanding balance on Customer's account. In the event Customer has authorized payment for Services or Equipment by credit card or by debiting a bank account, no additional notice or consent is required before

Diode invoices the credit card or debit the bank account for all amounts due to diode for any reason. Diode may accept late payments, partial payments, or any payments marked as being "payment in full" or as being settlement of any dispute without losing any rights under this Agreement. Customer shall be responsible for paying all costs and expenses, including attorney's fees, incurred by Diode to collect any unpaid balance from Customer. Diode may, at its discretion, require a deposit equal to two months of contract.

5. Termination/Interruption of Service. The Service and Equipment provided by Diode to Customer pursuant to this Agreement may be:

(a) terminated by either party at the end of the Initial Term or any successive term by serving prior written notice upon the other party of the party's intention to terminate upon the conclusion of the then current term or upon execution of a subsequent agreement between the parties;

(b) terminated by customer upon thirty (30) days prior written notice to Diode, but customer shall remain liable to Diode for payment of all charges, fees, taxes and assessment for the remainder of the then current term of this Agreement;

(c) terminated or interrupted by Diode at any time in the event the Customer:

(i) fails to honor any provision of this Agreement as determined by Diode;

(ii) uses the Service or Equipment in a manner that adversely affects Service to other customers or harasses Diode or any third party as determined by Diode; or

(iii) uses the Services or Equipment to engage or attempt to engage in any unlawful or improper conduct as determined by Diode;

(iv) fails to make timely payment for services provided by Diode. Customer shall remain liable for the remaining period of the contract in the amount of **\$15.00** per month whether terminated by customer or Diode, voluntarily or involuntarily.

(d) re-established after a termination of service only after all past due amounts are paid in full and contract amounts are satisfied. A new contractual relationship would then need to be established.

(e) re-claimed by Diode staff at reasonable hours following a termination of service. Diode retains the right to reclaim its reception equipment from customer after any and all terminations.

6. **Intended Use of Service.** Customer shall not use the Service or Equipment in a manner prohibited by any international, federal, state or local treaty, law or regulation. Customer shall adhere to Diode's Acceptable Use Policy as set forth on Diode's website at www.diodecom.net, which may be amended by Diode at any time. Transmission of any copyrighted material, material protected by trade secret or material or messages that are unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable in any manner or nature or that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable treaty, law or regulation, is strictly prohibited.

7. **No Expectation of Privacy.** Diode may, but is not obligated to, monitor the Service from time to time and Diode may disclose any information regarding Customer's use of the Service or Equipment only to appropriate authorities upon proper written request.

8. **No Liability for Content.** CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT DIODE EXERCISES NO CONTROL OVER THE NATURE, CONTENT OR RELIABILITY OF THE INFORMATION AND/OR DATA PASSING THROUGH ITS NETWORK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DIODE, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. DIODE MAKES NO WARRANTY OF ANY KIND REGARDING THE QUALITY, ACCURACY OR VALIDITY OF THE INFORMATION AND/OR DATA RESIDING ON OR PASSING THROUGH ANY NETWORK. USE OF ANY INFORMATION AND/OR DATA OBTAINED FROM OR THROUGH ANY SERVICE PROVIDED BY DIODE SHALL BE AT CUSTOMER'S OWN RISK. THE INTERNET CONTAINS UNEDITED MATERIALS THAT MAY BE SEXUALLY EXPLICIT OR MAY BE OFFENSIVE TO CUSTOMER OR OTHERS ACCESSING THE SERVICE AND DIODE HAS NO CONTROL OVER SUCH MATERIALS AND ACCEPTS NOT RESPONSIBILITY FOR SUCH MATERIALS.

9. **Limitation of Liability.** DIODE'S LIABILITY, IF ANY, REGARDING CUSTOMER'S USE OF THE SERVICE OR EQUIPMENT, OR THE FAILURE OF OR INABILITY TO USE THE SERVICE OR EQUIPMENT, IS LIMITED TO THE CHARGES CUSTOMER INCURRED FOR SERVICE OR EQUIPMENT DURING THE AFFECTED PERIOD. DIODE SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST BUSINESS OPPORTUNITIES), PUNITIVE OR EXEMPLARY DAMAGES, OR ATTORNEY'S FEES.

10. **Force Majeure.** Diode shall not be liable for any delay or failure in Diode's performance of any part of this Agreement from any cause beyond its reasonable control including, but not limited to, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, software viruses, power blackouts, volcanic action, other major environmental

disturbances, unusually severe weather conditions, or inability to secure the products or services of others.

11. **Disclaimer of Warranties.** DIODE MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE QUALITY OF SPEED OF ANY SERVICE OR EQUIPMENT PROVIDED UNDER THIS AGREEMENT. DIODE DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

12. **Indemnification.** Customer agrees to release, indemnify, defend and hold Diode, its officers, directors, employees, agents, and Diode's other customers harmless from any and all damages, loss debt, liability, obligation, claim, demand, judgment or settlement of any kind or nature known or unknown, liquidated or unliquidated, including, but not limited to, reasonable attorney's fees and costs, whether suffered, made, instituted or asserted by any other person for any demand, claim, suit, or cause of action arising from Customer's use of Diode's equipment, facilities, the Service or resulting from Customer's acts or omissions, regardless of the form of action.

13. **Assignment.** Diode may assign or transfer this Agreement or any rights or obligations hereunder to any third party at any time without the prior written consent of customer.

14. **Waiver.** Failure by Diode to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any right or power hereunder at any time be deemed a waiver or relinquishment of any further such rights or power of Diode.

15. **Severability.** The invalidity or unenforceability of any provision in this Agreement or part thereof shall in no way affect the validity or enforceability of any other provision.

16. **Applicable Law.** This agreement shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.