



## TERMS AND CONDITIONS

### 1. Service Agreement

a. The following Terms and Conditions are incorporated into the signed Service Agreement between you ("You" or "Customer") and Hypercore Networks, Inc. ("HCN") that refers to these Terms and Conditions. These Terms and Conditions with the signed Service Agreement constitute a legal document that details your rights and obligations as a customer of HCN.

b. Please review these Terms and Conditions. By signing the one page contract referencing these terms, you agree to be bound by the Terms and Conditions set forth in this document. Moreover, these terms and conditions supersede any and all written alterations to the one page contract referencing these terms unless such suggested alterations are specifically initialed by an authorized HCN representative.

c. If HCN makes a change to this Service Agreement that has a material impact on the Service, you will be provided notice of that change. Your continued use of the Service following such notice constitutes your acceptance of those changes.

### 2. HCN Broadband

a. Customer understands and agrees that HCN will contract with one or more partners to provide services to Customer. Customer's broadband agreement is with HCN, and HCN has the discretion to determine the best means to obtain and/or modify the underlying service inputs to provide such broadband to customer. Moreover, HCN may assign its rights and obligations to third parties without Customer's consent. However, HCN shall provide notice of any such assignment.

b. Operational Limits. Provisioning of service is subject to the availability and the operational limitations of the requisite equipment and associated facilities. You understand and agree that temporary interruptions of the service may occur as normal events in the provisioning of the Service and that HCN is not liable for such interruptions. You further understand and agree that HCN has no control over third party networks you may access in the course of your use of the service, and therefore, delays and disruptions of other network transmissions are, beyond the control of HCN. Moreover, Customer understands and agrees that HCN obligation is to use its best efforts to fulfill Customer's service agreement. Should network or commercial limitations prevent HCN from such fulfillment, Customer does not have any claim for damages, whether actual, consequential, reliance or otherwise, against HCN.

c. Installation Limits and the MPOE. Installation of a circuit is guaranteed only to the MPOE (Minimum Point of Entry) as determined by the local Telephone Company or ILEC (Incumbent Local Exchange Carrier). Customer understands and agrees that HCN Inc. has no control over the designation of the MPOE and agrees to assume additional costs for Demarc Extensions unless specifically outlined otherwise in the contract for services.

d. Customer agrees to provide HCN and its subcontractor's reasonable access to its premises in order to install, maintain and repair broadband to Customer. Customer will be responsible for payment of service charges for visits by HCN or its subcontractors to Customer's premises when a service request results from causes not attributable to HCN or its subcontractors.

e. HCN may charge customers an average rate for taxes and fees based on HCN payment of taxes and fees on average across its network either directly to state, federal or local authorities or through wholesale service agreements via its carriers.

f. HCN will charge customers a Regulatory Recovery Fee which is a fee authorized by the FCC to be charged to cover a carriers costs to comply with regulatory requirements for licensing, reporting and filing with the government agencies. The Regulatory Recovery Fee will be set at the beginning of each year by HCN. Customer agrees to HCN's calculation of the regulatory recovery fee in using HCN's services.

### 3. Renewal /Termination

This agreement shall be for the term of one year, unless a different term is indicated in a separate written document. Such term shall begin on the date HCN activates the Service outlined in this agreement. This agreement shall, upon expiration, be renewed upon identical terms by Customer's continued use of his account with HCN, unless written notice of cancellation is provided no later than sixty (60) calendar days prior to the expiration of this agreement. Termination by the Customer shall not create the right to a refund of any fees paid or payable. Such termination shall be effective upon then end of the current billing cycle, and any applicable

termination fees as outlined in this Agreement shall then be due and payable. If customer requests and HCN agrees to provide customer service on a month to month basis, customer will be required to give HCN 60 day notice to terminate service under the month to month arrangement. Requests for service on a month to month basis must be made prior to the 60 day notice necessary to cancel service prior to auto renewal.

#### **4. Pre-Installation Cancellation Fee**

If Customer cancels an Order for Service prior to installation for any reason other than a failure by HCN to Provide Service, the following charges will be assessed against the Customer and payable to HCN immediately:

- a. For Digital Subscriber Lines (DSL) or Cable Modem service, including (but not limited to) ADSL, SDSL, IDSL, RADSL, or HDSL, a \$400.00 pre-installation cancellation fee shall be assessed against the customer and payable to HCN immediately.
- b. For T1 (or DS1) connections, including (but not limited to) Fractional T1 and Full T1 connections, DS3, Ethernet or any other telecom service the pre-installation cancellation fee shall equal the total number of remaining months in the term of the applicable Service Order(s), multiplied by the Monthly Recurring Charges, payable to HCN immediately.

#### **5. Early Termination Fee**

If service is terminated, either in whole or in part, prior to the selected term expiration, then Customer shall pay an early termination fee equal to the total number of remaining months in the term of the applicable Service Order(s), multiplied by the monthly recurring charges, to be paid by the customer at the non-promotional rate. Customer agrees that the foregoing liquidated damages are fair and reasonable and that HCN's provisioning of the services would not be commercially viable but for these Customer commitments. Customer understands that a request to move service from the Customer's current location to another location that HCN determines cannot be economically served by HCN shall constitute termination of service or may incur a relocation charge.

#### **6. Other Charges**

- a. Where HCN approves a customer move and such a move is provisioned, no cancellation charge will apply to a Customer's move; however, a \$300 charge for re-installation and related costs will be assessed against Customer and payable to HCN with respect to such a move. The term of the Product/Service at the new location will be for at least 12 months from the date that re-installation is completed at the new location.
- b. Orders requiring the shipment of hardware, e.g. customer premises equipment, will be subject to a \$20.00 shipping and handling charge. Shipping and handling charges are non-refundable. If Customer refuses the charges outlined in this Agreement or back charges them by the credit card company, customer agrees to pay an additional \$200.00, and authorizes HCN to assess this charge to the Customer Credit Card. Customer also agrees to pay all collection fees required to collect any overdue, refused, or back-charged fees associated with this Agreement.
- c. If an installation appointment is cancelled after 12:00 noon (in the time zone of the affected circuit) on the business day preceding the scheduled installation date or if the Customer is not available at the scheduled time and date to permit installation to proceed as scheduled, a \$99.00 charge will be assessed against Customer and payable to HCN.

#### **7. Equipment and Software**

- a. HCN shall not be responsible for the installation, operation, or maintenance of customer premise equipment (CPE) or other equipment or software (including without limitation, cabling) not provided by HCN (collectively, "non-HCN equipment or software"). Customer shall be responsible for the use and compatibility of the non-HCN equipment or software. Impairment of the Customer's use of the services due to non-HCN equipment or software shall not relieve Customer of any obligations hereunder. HCN shall not be responsible for any changes in service which may cause non-HCN equipment or software to become obsolete, require modification or alteration, or which may otherwise impact performance of equipment or software.
- b. Other than all software and hardware provided to you by HCN and any revised version thereof that you choose to use, you must provide all equipment, devices and software necessary to receive the Service. Due to the infinite number of possible combinations of hardware and software, you are responsible for the compatibility of your system with the Service.
- c. In case HCN leases equipment to customer, HCN's liability shall be strictly limited to equipment replacement in case of equipment failure. HCN offers a 24 hour replacement policy on leased equipment however it is customer's responsibility to procure backup equipment in case of failure of leased equipment. HCN shall not incur any liability associated with any circuits connected to such equipment. There shall be no SLA credits associated with any service provided to customer due to leased equipment failure. If HCN cannot replace

equipment within 24 hours, customer may receive a one month credit for the equipment lease. Customer understands and agrees that this is customer's sole and exclusive remedy when leasing equipment from HCN.

#### **8. Payment**

a. Services are billed 30 days in advance. Any balance past-due will be billed at 6.5% per month finance charge. A minimum of \$100.00 disconnect/reconnect fees will be assessed on all balances exceeding 45 days past due, plus applicable finance charges. HCN reserves the right to terminate service without warning to any customer with an outstanding balance exceeding 45 days past due. If Service is terminated for non-payment, you will be liable for the remainder of your contract immediately.

The effective start date of each service shall be the first day of the contracted service being placed into billing as determined by HCN.

b. Inclusion of credit card number on this agreement hereby authorizes RHCN to charge all setup, service, and monthly charges (including any renewal of this Service) to Customer's Credit Card, without further notice to the Customer. Inclusion of Customer's tax identification number or social security number authorizes HCN, Inc. to access your personal credit report to make judgment on credit worthiness before services are extended.

c. Pricing quoted by HCN for service does not include any taxes or surcharges that may be applicable. Customer will be responsible for paying the appropriate taxes and surcharges for the services ordered.

#### **9. Limitations of Liability**

a. HCN shall not be liable to the Customer for any loss, damage, liability, claim or expense rising out of or in relation to this Agreement, the Services, or HCN's equipment.

b. HCN does not guarantee service speeds on DSL and cable services. Any service speeds quoted in this agreement are to be interpreted as estimates only, and do not guarantee the receipt of such speeds upon service delivery. HCN currently guarantees a connection speed of 64kbps for all DSL connections, including (but not limited to) IDSL, SDSL, ADSL, RADSL, and HDSL.

c. HCN does not guarantee actual dates of installation, or dates of service delivery. Any dates quoted by a HCN representative are meant as estimates only. HCN shall not be liable for any loss, damage, claim, or expense rising out of or in relation to installation dates, times, or any other scheduling factors.

d. Customer shall have the ability to dispute invoices for service charges, equipment fees, taxes, fees or any other item for a maximum of six months from the time the customer receives the invoice from HCN. HCN shall also only be able to invoice customer for missing items for a maximum of six months.

e. For any credits associated with any outages or service issues in any given month, HCN maximum liability will be the customer's service charges for that month.

#### **10. Self-Installation Waiver**

a. Customer agrees that HCN, its officers, employees, and channel partners are authorized to order a "self-install" on the customer's behalf whenever available, and releases them of responsibility for such tasks. "Self-Install" shall be defined as a line which may require the Customer to perform tasks including, but not limited to, inside wiring, hardware installation, and other equipment configuration as necessary. HCN or its third-party contractors, will aid in these tasks at the rate of \$99.00 per hour.

b. In consideration of HCN Inc. furnishing services and/or equipment to enable the Customer to participate in the self-installation of a DSL line, the Customer agrees as follows:

c. I, on behalf of myself, my personal representatives and my heirs, hereby voluntarily agree to release, waive, discharge, hold harmless, defend and indemnify and it's owners, agents, officers and employees from any and all claims, actions or losses for bodily injury, property damage, wrongful death, loss of services or otherwise which may arise out of my attempt for self-installation, I specifically understand that I am releasing, discharging, and waiving any claims or actions that I may have presently of in the future for the negligent acts or other conduct by the owners, agents, officers or employees of HCN. I hereby acknowledge that an unsuccessful installation attempt could result in additional costs.

d. Notwithstanding this Section 10, if the Customer explicitly contracts for a premium installation by written agreement, a self-install will not be authorized.

#### **11. Customer Premises Equipment Return Policy**

a. Equipment purchased from HCN and returned within twenty (20) days from the date of purchase with the original shipping invoice are eligible for refund or exchange. No refunds or exchanges are allowed after twenty (20) days from the date of purchase. All items must be in new condition, including the original box, packaging,

manuals and accessories. Products deemed defective after the 20-day period outlined above may be under Manufacturer's warranty, consult your owner's manual for details.

b. An open box fee equal to 20% of the purchase price will be charged on any opened item, unless the item is defective and exchanged for the exact same item (fee not applicable in Hawaii). The 20% open box fee will be assessed at the time of refund or exchange.

c. HCN will not accept the return or exchange of any item if the UPC code has been removed from the packaging.

d. Refunds on hardware will be issued in form of in-house account credit, unless otherwise requested and agreed to by HCN. Refunds on purchases made with a credit card will only be made as in-house account credit, or as a credit to the same card.

## 12. Notices

All notices given by any party or required under this agreement shall be in writing and addressed to:

Hypercore Networks, Inc.  
Attn: Contract Administration, 2024 W. 15<sup>th</sup> St, ste F, #331, Plano, TX 75075

## 13. Acceptable Use Policy

a. You agree that you will NOT use the Service to:

1. upload, post, email, transmit or otherwise make available any Content (as defined below) that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
2. Harm minors in any way;
3. Forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
4. Upload, post, email, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
5. upload, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
6. upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas (such as shopping rooms) that are designated for such purpose;
7. upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
8. disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
9. Interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
10. intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
11. "Stalk" or otherwise harass another; or
12. Collect or store personal data about other users.

b. You understand and agree that any attempt to break security, or to access an account which does not belong to you, will be considered a material breach of these Terms and Conditions, and such breach may result in suspension or termination of the Service, and possibly referral to law enforcement authorities. Unauthorized access to the Service, to restricted portions of the Service, or to the telecommunications or computer facilities used to deliver the Service, is a breach of these Terms and Conditions whether or not such activities are a violation of law. Further, you are required to take adequate security measures to prohibit others from unauthorized access or use of the Service, and you must take prompt remedial measures upon notice of breaches, or potential breaches, of security.

c. Violations of HCN's' Acceptable Use Policy may also be considered a material breach of these Terms and Conditions and may also result in suspension or termination of the Service.

d. HCN reserves the right to suspend or terminate the Service to you, or to suspend or terminate any electronic mail address, IP address, Universal Resource Locator or domain name used by you, in the event it is used in a manner which (i) constitutes violation of any law, regulation or tariff (including, without limitation, copyright and intellectual property laws); (ii) is defamatory, fraudulent, obscene or deceptive; (iii) is intended to threaten, harass or intimidate; (iv) tends to damage the name or reputation of HCN.

e. Under no circumstances will HCN be liable in any way for any Content, including, but not limited to, any errors

or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Service.

#### **14. Indemnity**

You agree to indemnify and hold HCN and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post, transmit or make available through the Service, your use of the Service, your connection to the Service, your violation of this Service Agreement, your violation of the Acceptable Use Policy, or your violation of any rights of another.

#### **15. Termination For Cause**

HCN may immediately terminate all or a portion of your service, or suspend any or all access to all or a portion of the service, without notice, for conduct that HCN believes is: (a) illegal, fraudulent, harassing or abusive; (b) a violation of these Terms and Conditions, any policies or guidelines posted by HCN on the service; or (c) harmful to other users, third parties, the service, or the business interests of HCN. If HCN has terminated a portion, but not all, of your access to the service for the foregoing reasons, you will nevertheless be responsible for the all charges for the service. Use of a service for illegal, fraudulent or abusive purposes may be referred to law enforcement authorities without notice to the Customer. If you file a claim against HCN, or a claim that in any way involves HCN, then HCN may terminate your service. Upon termination of your service, HCN will have no obligation to notify any third parties nor will HCN be responsible for any damages that may result or arise out of termination of your service. Termination or suspension by HCN of service to a Customer also constitutes termination or suspension (as applicable) of that Customer's license to use the Software.

#### **16. Modifications To Service**

a. HCN reserves the right to modify or discontinue, temporarily or permanently, at any time and from time to time, the Service (or any function or feature of the Service or any part thereof) with or without notice. You agree that HCN will not be liable to you or to any third party for any such modification, suspension or discontinuance of the Service.

b. HCN may be required to modify its pricing for service provided to you in case of carrier price increases, regulatory price increases or general price increases. In case of a price increase to customer, HCN shall provide customer with a minimum of 30 day notice. Customer may terminate service with no liability in case of such price increase by HCN.

#### **17. Additional Agreements**

a. If any provision of this agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this agreement will remain in full force and effect.

b. The Customer may not sell, transfer, or assign this agreement without the prior written consent o HCN.

c. Any alterations made to this Agreement by the Customer are null and void without the signature of an authorized HCN employee. Furthermore, the signed contract will remain in force (less the Customer alterations) according to the terms of this agreement.

d. Customer agrees that by signing an agreement referencing these terms, customer is bound to all terms and conditions as outlined in this agreement.

e. The section titles and paragraph headings in these Terms and Conditions are for convenience only and have no legal or contractual effect.

f. This document and the Service Order constitute the entire agreement between Customer and HCN. No verbal agreements will override these documents. Addendums to the MSA must be specifically signed by an authorized representative of HCN.

#### **18. Disclaimer Of Warranties**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

a. YOUR USE OF THE SERVICE AND/OR SOFTWARE IS AT YOUR SOLE RISK. THE SERVICE AND/OR SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. HCN EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

b. HCN MAKES NO WARRANTY THAT (i) THE SERVICE AND/OR SOFTWARE WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICE WILL AND/OR SOFTWARE BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE (FOR EXAMPLE, BUT WITHOUT LIMITATION, HCN DOES NOT WARRANT THAT YOU WILL ALWAYS RECEIVE EMAILS ADDRESSED TO YOU), (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE AND/OR SOFTWARE WILL

BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE AND/OR SOFTWARE WILL MEET YOUR EXPECTATIONS, AND ANY ERRORS IN THE SERVICE AND/OR SOFTWARE WILL BE CORRECTED.

c. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE/AND OR SOFTWARE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM HCN OR THROUGH OR FROM THE SERVICE AND/OR SOFTWARE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.

#### **19. Limitation Of Liability**

a. YOU EXPRESSLY UNDERSTAND AND AGREE THAT HCN WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF HCN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE SERVICE AND/OR SOFTWARE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE AND/OR SOFTWARE; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE AND/ OR SOFTWARE; (e) FAILURE TO INSURE THE COMPATIBILITY OF YOUR SYSTEM (I.E., THE EQUIPMENT, DEVICES, AND SOFTWARE THAT YOU PROVIDE TO RECEIVE THE SERVICE) WITH THE SERVICE AND/OR SOFTWARE, OR (f) ANY OTHER MATTER RELATING TO THE SERVICE AND/OR SOFTWARE.

b. YOUR SOLE REMEDY AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH HCN IN CONNECTION WITH THE SERVICE AND/OR SOFTWARE IS THE CANCELLATION OF YOUR SERVICE AS PROVIDED IN THESE TERMS AND CONDITIONS.

#### **20. Exclusions And Limitations**

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 18 AND 19 MAY NOT APPLY TO YOU.

#### **21. General Information**

The Terms and Conditions referenced herein combined with your signed agreement referencing these term and conditions Terms and Conditions, policies and, constitute the entire agreement between HCN and you. These Terms and Conditions govern your use of the Service, superseding any prior agreements between you and HCN with respect to the subject matter of these Terms and Conditions. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content or third-party software. These Terms and Conditions and the relationship between you and HCN will be governed by the laws of the State of Texas without regard to its conflict of law provisions. You and HCN agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Collin, Texas. The failure of HCN to exercise or enforce any right or provision of these Terms and Conditions will not constitute a waiver of such right or provision. If any provision of these Terms and Conditions is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms and Conditions remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these Terms and Conditions must be filed within one (1) year after such claim or cause of action arose or be forever barred.