

## 10D Telecom Terms of Service

These Terms of Service constitute the agreement ("Agreement") between 10D Telecom, Inc. d/b/a 10D Tech ("we," "us" or "10D") and the user ("you," "user" or "Customer") of 10D's business Information Technology services and any related products or services ("Service").

This Agreement governs both the Service and any devices, such as an IP Phone, Multimedia Terminal Adapter, Analog Telephone Adapter, Router & Phone Adapter, network switch, firewall, or any other IP connected device ("Device" or "Equipment"), used in conjunction with the Service.

You are not required to purchase voice services from 10D nor from any of its affiliates. If You elect to purchase voice services from a 10D affiliate, please be advised of the following: (i) voice services may be provided through 10D's affiliate, ElliCom; (ii) You may be required to agree to related documents provided by any 10D affiliate; and (iii) the terms and conditions of this Agreement will apply to the services you receive from ElliCom or any other 10D affiliate as well as the terms and conditions in ElliCom's or the affiliate's agreements and related documents. If You instead choose to purchase voice services through an unrelated third party, this Agreement will not govern the provision of any services provided by such third party, and such third-party-provided voice services are used at Your sole risk and pursuant to the terms and conditions you enter into with such third party.

In the event that You have purchased these services with the assistance or upon the recommendation of a 10D registered Agent or Advisor, You hereby grant that Advisor/Agent the right to manage Your Account, including creation, management and deletion of users and services. You acknowledge and agree that You are responsible for all charges, fees, surcharges, and taxes resulting from any changes made to Your Account by the registered Advisor/Agent. If you do not want Your registered Advisor/Agent to have the right to manage Your Account, You must notify 10D in writing.

BY ENROLLING IN, ACTIVATING, USING OR PAYING FOR THE SERVICE OR DEVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT, THAT YOU ARE OF LEGAL AGE, AND THAT YOU AGREE TO BE BOUND BY ALL TERMS HEREIN. IF YOU HAVE NOT READ AND UNDERSTOOD THIS ENTIRE AGREEMENT, AND DO NOT AGREE TO BE BOUND BY ITS TERMS, DO NOT USE THE SERVICE OR DEVICE, AND CANCEL THE SERVICE IMMEDIATELY BY CONTACTING 10D VIA E-MAIL AT [billing@10dvoice.com](mailto:billing@10dvoice.com) AND STATING YOUR NAME, ACCOUNT INFORMATION AND DESIRE TO CANCEL SERVICE.

### 1. SERVICE

**1.1 Term.** Service is offered on a monthly or multi-month basis as is determined in your Service activation or order form, or via our online ordering process. The term begins on the date that 10D activates your Service and ends on the day before the anniversary date of your Term. Subsequent terms of this Agreement automatically renew on a monthly basis unless you give us written notice of non-renewal at least thirty (30) days before the end of the monthly term in which the notice is given. You are purchasing the Service for full monthly terms, meaning that if you attempt to terminate Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will immediately become due and payable. You will also be responsible for the next full month's charges in the event that you do not provide the requisite thirty-day notice of termination prior to the expiration of the then-current term. Expiration of the term or termination of Service will not excuse you from paying all accrued and unpaid charges due under this Agreement. If you disconnect service prior to the end of any multi-month commitment period, you agree to pay 10D a recovery fee for the promotion you accepted. Recovery fees are cumulative and in addition to any other charges or fees you may owe 10D and any fees or charges that 10D requires upon disconnection of service, such as those described in Section 2.7. Each recovery fee is an amount equal to the difference between the price you paid and the regular price of the good or service at the time you accepted the equipment or promotion.

**1.2 Equipment Requirements.** The Service requires standard IP based customer premises equipment ("CPE") which will be provided by 10D pursuant to the terms of this Agreement. Use of the Service without such equipment is strictly prohibited.

**1.3 Use of Service and Device.** If you subscribe to 10D's services, the Service and Device are provided to you as a business user. You shall not resell or transfer the Service or the Device to another party without our prior written consent. You are prohibited from using the Service or the Device for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately disconnect or modify your Service if we determine, in our sole and absolute discretion, that you have at any time used the Service or the Device for any of the aforementioned or similar activities.

## 1.4 Prohibited Uses.

(a) **Unlawful.** You agree to use the Service and the Device only for lawful purposes. You agree not to use the Service or Device for any unlawful purpose, including for example, using the Service in a way that (1) interferes with our ability to provide Service to you or other customers, or (2) avoids your obligation to pay for the Services. You also agree not to use the Service for transmitting or receiving any communication or material of any kind which would (1) constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law or (2) encourage conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. 10D reserves the right to terminate the Service immediately and without advance notice if 10D, in its sole discretion, believes that you have violated the above restrictions, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due, payable and chargeable to your credit card. If 10D, in its sole discretion believes that you have violated the above restrictions, 10D may forward the objectionable material, as well as your communications with 10D and your personally identifiable information to the appropriate authorities for investigation and prosecution, and by using the Service you thereby consent to such forwarding.

(b) **Inappropriate Conduct.** You shall not use the Service or the Device in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior. We reserve the right to immediately disconnect your Service without notice, if, in our sole and absolute discretion, we determine that you have used the Service or the Device in any of the aforementioned ways. In the event of such disconnection, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of your Service. If we believe that you have used the Service or the Device in any of the aforementioned ways, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, 10D will provide information in response to law enforcement requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to the Customer or others. Furthermore, 10D reserves all of its rights at law and equity to proceed against anyone who uses the Service or Device illegally or improperly.

1.5 **Use of Service and Device Outside of Local Coverage Area.** Although we encourage you to use the Service to place calls to anywhere within the United States, we do not presently offer or support the Service in all local coverage areas. We reserve the right to disconnect your Service immediately if we determine, in our sole and absolute discretion, that you have used the Service or the Device at a physical location that is different from the physical location for which your Service and/or Device is registered with 10D.

1.6 **Copyright; Trademark.** The Service and Device and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on our websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of our websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") are and will at all times remain our exclusive property. Nothing in this Agreement grants you the right or license to use any of our marks.

1.7 **Unauthorized Usage of Device; Firmware or Software.** You have not been granted any license to use the firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, other than a nontransferable, revocable license to use such firmware or software in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. You expressly agree that the Device is exclusively for use in connection with the Service and that we will not provide any passwords, codes or other information or assistance that would enable you to use the Device for any other purpose. We reserve the right to prohibit the use of any interface device that we have not provided to you. You hereby represent and warrant that you possess all required rights, including software and/or firmware licenses, to use any interface device that we have not provided to you. In addition, you shall indemnify and hold us harmless against any and all liability arising out of your use of such interface device with the Service. You 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.

1.8 **Tampering with the Device or Service.** You shall not change the electronic serial number or equipment identifier of the Device or perform a factory reset of the Device without our prior written consent. We reserve the right to disconnect your Service if we believe, in our sole and absolute discretion, that you have tampered with the Device. In the event of such disconnection, you will remain responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become

due and payable. You shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

**1.9 Theft of Service.** You shall not use the Service in a manner calculated to avoid 10D policies and procedures. You shall not obtain or use the Services in an improper manner. You shall notify us immediately, in writing or by calling our customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the disconnection of your Service and additional charges to you. Until such time as we receive notice of the theft, fraudulent use or unauthorized use, you will be liable for all use of the Service using a Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service. 10D reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

**1.10 Ownership and Risk of Loss.** You will be responsible for the Device and bear all risk of loss of, theft of, casualty to or damage to the Device, from the time it is shipped to you until the time (if any) when it is returned to us in accordance with this Agreement.

**1.11 Number Transfer on Service Termination.** Upon the termination of your Service, we may, in our sole and absolute discretion, release to your new service provider the telephone number that you ported (transferred or moved over) to us from your previous service provider and used in connection with your Service if:

- such new service provider is able to accept such number;
- your account has been properly terminated;
- your account is completely current, including payment for all charges and applicable termination fees; and
- you request the transfer upon terminating your account.

**1.12 Service Distinctions.** The Service is a maintenance and support service and is not telecommunications service and we provide it on a best efforts basis. Things beyond our control may affect the Service, such as power outages, fluctuations in the internet, your underlying broadband service. Other things may affect Service, such as maintenance. 10D will act in good faith to minimize disruptions to your use of and access to Service.

**1.13 No 0+ or Operator Assisted Calling; May Not Support x11 Calling.** The Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls or calling card calls). The Service may not support 311, 511 and/or other x11 (other than certain specified dialing such as 911 and 411, which are provided for elsewhere in this Agreement) services in one or more (or all) service areas.

**1.14 Directory Listing.** The phone numbers you obtain from us will not be listed in any telephone directories automatically. Phone numbers transferred from your local phone company may, however, be listed. As a result, someone with your phone number may not be able to utilize a reverse directory to lookup your address. If you would like to have your numbers listed within the National Directory Listing Service a onetime service fee will be charged to your account.

**1.15 Incompatibility with Other Services.**

(a) **Security Systems.** The Service may not be compatible with security systems. You may be required to maintain a telephone connection through your local exchange carrier in order to use any alarm monitoring functions for any security system installed in your home or business. You are responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.

(b) **Certain Broadband and Cable Modem Services.** You acknowledge that the Service presently may not be compatible with some broadband services. You further acknowledge that some providers of broadband service may provide modems that prevent the transmission of communications using the Service. We do not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

## **2. CHARGES; PAYMENTS; TAXES; DISCONNECTION**

**1.1. Billing.** When the service is activated, you must provide us with a valid email address and payment method to include check payment for first and last month, or EFT payment info. If you are approved by 10D to be billed via invoice, we reserve the right to revoke such approval with just cause and switch you to EFT billing. If you close your account, your billing address changes, or your EFT account information changes, you must advise us at once. We will bill all charges, applicable taxes and surcharges monthly in advance (except for usage-based charges, which will be billed monthly in arrears, and any other charges which we decide to bill in arrears) to your account, including but not limited to:

- activation fees;

- monthly Service fees;
- advanced feature charges;
- equipment purchases;
- termination fees; and
- support fees.

Notification of monthly invoices will be sent to you via your email address on file with us.

**2.1 Billing Disputes.** You must notify us in writing within seven days after receiving your bank statement if you dispute any 10D charges on that statement or you will be deemed to have waived any right to contest such charges. All notices of disputed charges should be sent to [billing@10dtech.com](mailto:billing@10dtech.com) and a confirmation email should be requested.

**2.2 Payment and Collection.**

**(a) Payment.** We only accept payment by EFT, unless other payment terms have been explicitly agreed to in writing by 10D. Your subscription to the Service authorizes us to charge your bank account. This authorization will remain valid until 30 days after we receive written notice from you terminating our authority to charge your bank account, whereupon we will charge your bank account for the termination fee, if applicable, and any other outstanding charges and terminate your Service. We may terminate your Service at any time in our sole and absolute discretion if any charge to your bank account is declined or reversed, bank account is closed and you have not provided us with a valid replacement account or in case of any other non-payment of account charges.

**(b) Collection.** If your Service is terminated, you will remain fully liable to us for all charges pursuant to this Agreement and any and all costs we incur to collect such amounts, including, without limitation, collection costs and attorney's fees.

**2.3 Disconnection; Discontinuance of Service.** We reserve the right to suspend or discontinue the Service generally with ninety (90) days advance notice, or to terminate your Service, at any time, for breach of this Agreement. If we discontinue the Service generally, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. If your Service is terminated on account of your breach of any provision of this Agreement, you will be responsible for the full monthly charges to the end of the current term, including, without limitation, unbilled charges, plus the disconnection fee, if applicable, all of which will immediately become due and payable. 10D will pursue collection for unpaid amounts on disconnected accounts and may report to credit bureaus.

**2.4 Toll Free Charges.** If you use our "Toll Free" feature or any toll free feature that we offer in the future, we will be entitled to recover from you any charges imposed on us either directly or indirectly in connection with toll free calls made to your number. We may recover these amounts by means of a per-call charge, rounded up to the next cent, or in such other fashion as we deem appropriate for the recovery of these costs.

**2.5 Charges for Directory Calls (411).** We will charge you \$1.50 for each call made to directory assistance.

**2.6 Taxes.** State and local governments may assess taxes, surcharges and/or fees on your use of the 10D service. These charges may be a flat fee or a percentage of your 10D charges and may change from time to time without notice. These charges are based on the rates applicable to the address you provided to us. You are responsible for all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to your credit card as set forth in this Agreement. If you are exempt from payment of such taxes, you must provide us with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive such certificate.

**2.7 Disconnection Fee.** You will be charged a disconnection fee if your Service is disconnected for any reason within the first year following the activation of your Service, or before the end of any term commitment.

**3. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES**

**3.1 Limitation of Liability.** We will not be liable for any delay or failure to provide the Service, including 911 dialing, at any time or from time to time, or any interruption or degradation of quality that is caused by any of the following:

- an act or omission of an underlying carrier, service provider, vendor or other third party;
- equipment, network or facility failure;
- equipment, network or facility upgrade or modification;
- force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and government actions;
- equipment, network or facility shortage;
- equipment or facility relocation;

- service, equipment, network or facility failure caused by the loss of power to you;
- outage of, or blocking of ports by, your ISP or broadband service provider or other impediment to usage of the Service caused by any third party;
- any act or omission by you or any person using the Service or Device provided to you; or
- any other cause that is beyond our control, including, without limitation, a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications (including, without limitation, 911 dialing) to be connected or completed, or forwarded.

Our aggregate liability under this agreement will in no event exceed the Service charges with respect to the affected time period.

**3.2 Disclaimer of Liability for Damages.** THE TERM "10D" AS USED IN THIS SECTION SHALL MEAN 10D TELECOM, INC. AND ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, SERVANTS AND AGENTS AND ANY OTHER SERVICE PROVIDER THAT FURNISHES SERVICES OR DEVICES TO YOU IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE OR THE DEVICE.

IN NO EVENT SHALL 10D BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES FOR LOSS OF DATA, LOSS OF REVENUE OR PROFITS, RELATING TO OR ARISING OUT OF THE SERVICE, THE USE OF OR INABILITY TO USE THE SERVICE, THE ABSENCE, DELAY, FAILURE OR OUTAGE OF THE SERVICE, THE DEVICE, THE USE OF AND/OR INABILITY TO USE THE DEVICE, THE INSTALLATION OF THE DEVICE, AND/OR THIS AGREEMENT. NOR SHALL 10D BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICE, AT ANY TIME OR FROM TIME TO TIME, OR FOR ANY INTERRUPTION OR DEGRADATION OF QUALITY CAUSED BY ANY REASON INCLUDING BUT NOT LIMITED TO THE FOLLOWING: AN ACT OR OMISSION OF AN UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR OR THIRD PARTY, EQUIPMENT, NETWORK OR FACILITY FAILURE, EQUIPMENT, NETWORK OR FACILITY UPGRADE, SERVICE, MAINTENANCE, MODIFICATION, SHORTAGE, OR RELOCATION, FORCE MAJEURE EVENTS SUCH AS BUT NOT LIMITED TO ACTS OF GOD, ADVERSE WEATHER, STRIKES, FIRE, WAR, RIOT, GOVERNMENT ACTIONS OR TERRORISM, SERVICE, DEVICE, EQUIPMENT, NETWORK OR FACILITY FAILURE CAUSED BY THE LOSS OF POWER OR INTERNET SERVICE TO 10D OR CUSTOMER, AND ANY CAUSE THAT IS BEYOND 10D'S CONTROL, INCLUDING WITHOUT LIMITATION THE FAILURE OF AN INCOMING OR OUTGOING COMMUNICATION, OR THE INABILITY OF COMMUNICATIONS TO BE CONNECTED OR COMPLETED. 10D SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO 10D'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES, EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF 10D'S NEGLIGENCE OR OTHER ACTS OR OMISSIONS. 10D'S LIABILITY FOR ANY ACT OR OMISSION SHALL IN NO EVENT EXCEED THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD. THE LIMITATIONS SET FORTH HEREIN APPLY TO ALL CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT, AND ANY AND ALL OTHER THEORIES OF LIABILITY, AND APPLY WHETHER OR NOT 10D WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGE. FURTHER, YOU AGREE TO REIMBURSE 10D FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS, INCLUDING ATTORNEYS' FEES AND LITIGATION COSTS. THE PROVISIONS OF THIS SECTION SHALL BE APPLIED TO THE FULLEST EXTENT OF THE LAW, BUT IF ANY PORTION OF THIS SECTION IS DETERMINED TO BE UNLAWFUL, THEN THIS SECTION SHALL BE CONSTRUED TO LIMIT LIABILITY AGAINST 10D TO THE FULLEST EXTENT POSSIBLE UNDER THE LAW. THIS SECTION SHALL SURVIVE THE AGREEMENT.

**3.3 Indemnification.** THE TERM "10D" AS USED IN THIS SECTION SHALL MEAN 10D TELECOM, INC. AND ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, SERVANTS AND AGENTS AND ANY OTHER SERVICE PROVIDER THAT FURNISHES SERVICES OR DEVICES TO YOU IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE OR THE DEVICE.

YOU ARE LIABLE FOR ANY AND ALL USE OF THE SERVICE AND/OR DEVICE BY YOURSELF AND BY ANY PERSON MAKING USE OF THE SERVICE OR DEVICE, AND YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS 10D AGAINST ANY AND ALL LIABILITY FOR ANY SUCH USE THAT FAILS TO COMPLY WITH THIS AGREEMENT. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS 10D FROM ANY AND ALL CLAIMS AND/OR LIABILITY FOR DAMAGES, PERSONAL INJURY, DEATH, FINES, PENALTIES, COSTS, EXPENSES, LOSSES, LOST PROFIT, LOST REVENUE, PROPERTY DAMAGE, ATTORNEYS' FEES, AND ANY AND ALL OTHER DAMAGES OF WHATEVER KIND AND NATURE RELATING TO OR ARISING OUT OF THE SERVICE, THE USE OF OR INABILITY TO USE THE SERVICE, THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICE, THE INABILITY TO DIAL 911 OR E911 TO ACCESS EMERGENCY SERVICE PERSONNEL, THE INABILITY TO DIAL SECURITY, LAW ENFORCEMENT OR FIRE PREVENTION/ PROTECTION SERVICES OR SYSTEMS, THE DEVICE, THE USE

OF AND/OR INABILITY TO USE THE DEVICE, THE INSTALLATION OF THE DEVICE, AND/OR THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE AGREEMENT.

**3.4 No Warranties on Service.** WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER 10D NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES, DEVICES, OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THE SERVICE, WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO OUR OR YOUR TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF 10D'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY 10D OR 10D'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

**3.5 Device Warranties.**

(a) **Limited Warranty.** Except as set forth herein, if you received a Device from us and the Device included a limited manufacturer warranty at the time of receipt, you must refer to the separate limited manufacturer warranty document provided with the Device for information on the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation.

(b) **No Warranty.** IF A LIMITED MANUFACTURER WARRANTY DID NOT COME WITH YOUR DEVICE, YOU ARE ACCEPTING THE DEVICE "AS IS". YOUR DEVICE IS NOT ELIGIBLE FOR REPLACEMENT, REPAIR OR REFUND.

(c) **Disclaimer.** OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE, WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE.

**3.6 No Third Party Beneficiaries.** No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

**3.7 Content.** You will be liable for any and all liability that may arise out of the content transmitted by you or to any person, whether authorized or unauthorized, using your Service or Device (each such person, a "User"). You shall assure that your and your User's use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. We reserve the right to disconnect or suspend your Services and remove your or your Users' content from the Service, if we determine, in our sole and absolute discretion, that such use or content does not conform with the requirements set forth in this Agreement or interferes with our ability to provide Services to you or others. Our action or inaction under this Section will not constitute any review or approval of your or Users' use or content.

**3.8 Recording Conversations.** 10D may provide a function that allows you or your User to record individual telephone conversations. The laws regarding the notice and notification requirements of such recorded conversations vary by state to state. Subscriber is solely responsible for applying the local laws in the relevant jurisdiction when using this feature.

**3.9 Service Level Agreement.** 10D may, if necessary, temporarily limit or suspend immediately the Service without liability if reasonably necessary to prevent any harm to 10D and its business, to any downstream service provider or to you. 10D will provide written notice of such limitation or suspension to you either in advance if possible, or if advance notice is not possible, then as soon as practicable upon imposing such limitation or suspension depending on the nature of the emergency and the repairs required. You shall follow all reasonable instructions provided by 10D for the purpose of mitigating the effects of such emergency, provided, however, that in no event shall your Users be required to incur

additional expenses in connection therewith. Any such suspension or limitation shall be limited to the time period in which 10D is performing emergency repair activities and full services shall be restored as soon as possible. Such activities shall be treated as a Severity Critical according to the SLA found at <http://www.10dtech.com/legal>, with service credits stated therein as applicable.

#### **4. MISCELLANEOUS**

**4.1 Governing Law.** The Agreement and the relationship between you and us is governed by the laws of the State of Oregon without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 4.2, you shall submit to the personal and exclusive jurisdiction of the courts located within the State of Oregon and waive any objection as to venue or inconvenient forum.

**4.2 Mandatory Arbitration and No Jury Trial.** Any dispute or claim between you, or any guest or employee of you, and us arising out of or relating to the Service or Device will be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration will take place in Portland, Oregon. The arbitrator's decision will follow the plain meaning of the relevant documents, and will be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED. All claims shall be arbitrated individually. You shall not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL AND AN AGREEMENT TO BE SUBJECT TO JURISDICTION IN, AND CONDUCT ARBITRAL PROCEEDINGS IN, OREGON.

**4.3 No Waiver of Rights.** Our failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

**4.4 Entire Agreement.** This Agreement, including any future modifications as may occur within the terms of the Agreement, and the rates for Services constitute the entire agreement between you and 10D and govern the use of the Service by you, guests and employees. This Agreement supersedes any prior agreements between you and 10D, with respect to the Service and Devices, and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

**4.5 Severability.** If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

**5. FUTURE CHANGES TO THIS AGREEMENT.** We may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted on our website. Such changes will become binding on you on the date they are posted to our website and no further notice by us is required upon your continued use of the Service. The Agreement as and when posted supersedes all previously agreed to electronic and written terms of service, including, without limitation, any terms included with the packaging of the Device including, without limitation, any written terms enclosed within the packaging of the Device.

**6. PRIVACY.** 10D Service utilizes, in whole or in part, the public Internet and third party networks to facilitate technical support, system monitoring, configuration changes and other services. 10D is not liable for any lack of privacy which may be experienced with regard to the Service. You agree that 10D may access all features of your account and the Services to determine whether the Services are being used fraudulently and/or in violation of this Agreement, and for any other purposes. YOU AGREE THAT 10D SHALL NOT BE LIABLE FOR ANY LACK OF PRIVACY. Please refer to our Privacy Policy at [www.10dvoice.com/legal](http://www.10dvoice.com/legal) for additional information.

**7. ASSIGNMENT.** 10D may assign all or part of its rights or duties under the Agreement without notifying you. If we do that, we have no further obligation to you. You may not assign the Agreement or the Service or Device without our prior written agreement.

**8. SURVIVAL.** The provisions of this Agreement relating to indemnification, limitations on liability, warranty limitations and disclaimers, resolution of disputes, billings and your obligation to pay for the Service provided and any additional usage charges, shall survive the termination of the Agreement and the termination of the Service.