

# TheNewNet Communications Inc.

## Terms of Service

### PLEASE READ THE IMPORTANT INFORMATION BELOW

These Terms of Service constitute the agreement ("Agreement") between TheNewNet Communications Inc. ("we," "us" or "TheNewNet") and the user ("you", "user", "customer") of TheNewNet's communications 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 or any other IP connection device ("Device" or "Equipment"), used in conjunction with the Service and it applies to all lines on each TheNewNet account. If you purchased Equipment from a retail store, or a provider other than TheNewNet ("Retail Provider"), you are a "Retail Customer" for purposes of this Agreement.

**BY ACTIVATING OR USING THE SERVICE, YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ AND UNDERSTAND AND AGREE FULLY ITS TERMS AND CONDITIONS.**

### 1. EMERGENCY SERVICES - 911 DIALING

#### 1.1 Non-Availability of Traditional 911 or E911 Dialling Service.

TheNewNet Communications Inc offers a form of 911 service (911 Dialing) that is similar to traditional 911 service but has some important differences and limitations when compared with enhanced 911 service (E911) available in most locations in conjunction with traditional telephone service. With both traditional 911 and E911 service, your call is sent directly to the nearest emergency response centre. In addition, with E911 service, your call back number and address are visible to the emergency response centre call-taker. With TheNewNet's 911 service, your call is sent to a national emergency call centre. The call centre operator will request or confirm your location information and then transfer your 911 call to the emergency response centre nearest your location. You should be prepared to provide or confirm your address and call-back number with the operator. If you use a SoftPhone, your 911 calls will be routed to the national emergency response centre; however, emergency personnel do not receive your phone number or physical location information. Do not hang up unless told directly to do so and if disconnected, you should dial 911 again.

#### 1.2 Registration of Physical Location Required.

You should ensure your location information, when registered with TheNewNet Communications Inc, is kept current at all times. In case you are not able to speak during the 911 call, the call taker would dispatch emergency response vehicles to your last registered address. You need to update your 911 Dialing information if you move your device to a different location and/or if you add a new line to your account.

#### 1.3 Service Outages.

911 Dialing service will not function in the event of a power or broadband outage or if your broadband, ISP or TheNewNet Communications Inc service is suspended or disconnected. Following a power failure or disruption, you may need to reset or reconfigure your Device prior to utilizing the service, including 911 Dialing.

#### 1.4 Re-Registration Required if You Change Your Number or Add or Port New Numbers.

You must successfully register your location of use for each changed, newly added or newly ported number in order for 911 Dialing to function as intended. Regardless of what address you register for our services, the national emergency response centre does not receive your phone number or physical location information when you place a 911 call.

#### 1.5 Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls.

There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 Dialing over traditional public telephone networks.

#### 1.6 Conveying Limitations to other household residents and guests.

You should inform any household residents, guests and other persons who may be present at the physical location where you utilize the TheNewNet Communications Inc service, of the important differences in and limitations of VoIP 911 Dialing service as compared with E911 service, as set out above.

#### 1.7 Disclaimer of Liability and Indemnification.

We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local emergency response centre. We disclaim all responsibility for the conduct of local emergency response centres and the national emergency calling centre. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centres and to a national emergency calling centre. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither TheNewNet nor its officers or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to our 911 Dialing service unless such claims or causes of action arose from our

gross negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless TheNewNet, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, legal fees and expenses) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

### **1.8 Alternate 911 Arrangements.**

If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the Service.

## **2. SERVICE TERM.**

### **2.1(a) Service Term.**

Service is offered and paid for on a prescribed recurring basis for a term that begins on the date that TheNewNet activates your Service and ends on the day before the same date in the following period ("Service Term"). Subsequent terms of this Agreement automatically renew for the same Service Term unless you give us written notice of disconnection at least ten (10) days before the end of the applicable Service Term. You are purchasing the Service for the full Service Term, meaning that if you attempt to disconnect Service prior to the end of the applicable Service Term, you will be responsible for all charges relating to the then-current Service Term, including unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become due and payable. You will also be responsible for charges for the following Service Term in the event that you do not provide the requisite ten-day disconnect notice as described above.

### **2.1(b) Other Commitments.**

If you accept an equipment upgrade or other promotional or plan benefit, such as a free month of Service, free installation, a rebate or other incentive, there may be a commitment associated with the benefit you accepted ("Commitment"). To the extent there is a Commitment, it begins on the date you activate the new equipment or accept the promotion or benefit. The Commitment period will be disclosed as part of the promotion or plan. If you disconnect service prior to the end of the Commitment period, you agree to pay TheNewNet a recovery fee in an amount equal to the difference between the price you paid and the regular price of the good, service or other benefit you received at the time the Commitment period began. Recovery fees are cumulative and in addition to any other charges or fees you may owe TheNewNet, including any disconnection fees.

### **2.2 Residential Use of Service and Device.**

If you subscribe to TheNewNet's residential services, the Service and the Device are provided to you solely for residential use. 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 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 your use of the Service or the Device is, or at any time was, inconsistent with normal residential usage patterns. In addition, you will be required to pay our higher rates for commercial service for all periods in which your use of the Service or the Device was inconsistent with normal residential use. If you are a TheNewNet subscriber, we reserve the right to either suspend your Service and offer you an alternative call plan or terminate your Service if we determine, in our sole and absolute discretion, that your use of the Service or the Device is, or at any time was, inconsistent with normal residential usage patterns or otherwise inconsistent with our RESIDENTIAL USAGE POLICY which we apply to help ensure reliability and quality of the Service. In addition, you will be required to pay our higher rates for commercial service for all periods in which your use of the Service or the Device was inconsistent with normal residential use or our RESIDENTIAL USAGE POLICY.

### **2.3 TheNewNet Virtual Office Use of Service and Device.**

If you subscribe to TheNewNet's Virtual Office Plan, the Service and Device are provided to you as a small 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 your use of the Service or the Device is, or at any time was, inconsistent with normal small business usage patterns, that you have at any time used the Service or the Device for any of the activities mentioned above or similar activities. The device is property of TheNewNet Communications Inc, any damage to it will represent a charge of \$70, when paid a new unit will be sent to the customer.

### **2.4 Prohibited Uses: Unlawful Uses and Inappropriate Conduct**

You shall use the Service and the Device only for lawful purposes. You shall not use the Service or Device in any way that is improper or inappropriate, including in a manner that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behaviour. In addition, you shall not use the Service or the Device to impersonate another person; send bulk unsolicited messages; use robots, data mining techniques or other automated devices or programs to catalogue, download, store or otherwise reproduce or distribute information from the Service or use any such automated means to manipulate the Service; use the Service to violate any law, rule or regulation; violate any third party's intellectual property or personal rights; or exceed your permitted access to the Service. Subject to applicable law, we may, but are under no obligation to, monitor usage of the Service for violations of this Agreement. We may remove or block any or all communications if we suspect a violation of this Agreement or if we deem it necessary in order to protect the Service, or TheNewNet, its parent, affiliates, directors, officers, agents and employees from harm. 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 for an unlawful purpose or in ways mentioned above. In the event of such disconnection you will be responsible for all fees and charges due under this Agreement, including those referred to in Section 2.1, plus a disconnection fee, if applicable, all of which will be immediately due and payable. If we believe that you have used the

Service or the Device for an unlawful purpose, 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, TheNewNet will provide customer and call detail information in response to lawful government requests, subpoenas, court orders and to protect its rights and property, and in response to law enforcement requests where the failure to disclose the information may lead to imminent harm to the customer or others. Furthermore, TheNewNet reserves all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

## **2.5 Use of Service and Device by Customers Outside Canada**

Although we encourage you to use the Service to place calls to foreign countries from within Canada and the United States, and to use the Service as you travel, TheNewNet offers and supports services only in Canada. TheNewNet Service is designed to work generally with unencumbered high-speed internet connections. However, if the high-speed internet connection you are using is not within a TheNewNet service area, and/or your ISP or other broadband provider places restrictions on the usage of VoIP services, TheNewNet does not represent or warrant that use of the Service by you is permitted by any other jurisdictions or by any ISP or broadband provider. You will be solely responsible for any violations of local laws and regulations resulting from such use. 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 in violation of laws of jurisdictions outside of TheNewNet service areas.

## **2.6 Copyright; Trademark; Unauthorized Usage of Device; Firmware or Software.**

### **(a) 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.

### **(b) Unauthorized Usage of Device; Firmware or Software.**

For residential and business plan customers only, you (i) 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, and (ii) 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.

## **2.7 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 all charges through the end of the current Service Term, including unbilled charges, plus a disconnection fee, if applicable, all of which will immediately be 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.

## **2.8 Theft of Service.**

You shall not use or obtain the Service in any manner that avoids TheNewNet policies and procedures including in an illegal or 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 whether or not it involves a stolen Device. TheNewNet reserves all of its rights at law and equity to proceed against anyone who uses the Services or Device illegally or improperly.

## **2.9 Return of Device (Applies to Residential and Business Plan customers only)**

### **Non-Retail Customers.**

Non-Retail Customers - may return the Device to us if 1) you cancel services within the Money Back Guarantee period and 2) you return the Device to us with a valid return authorization number within fourteen (14) days of the date you disconnected the Service. If you receive cartons or Devices that are 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 carton, all packing materials and parts intact in the same condition in which they were received from the carrier and contact our customer care department immediately at the number advertised on our web site [www.thenewnet.ca](http://www.thenewnet.ca).

## **2.10 Number Transfer or "Port" on Service Disconnection.**

**Single line Accounts.**

You may be able to take, or "port," your current number to another service provider. If you ask your new service provider to port a number from us, and we receive your request from the new service provider, we will terminate our service for that number shortly after notification to TheNewNet by the relevant carrier(s) of the successful completion of the port. Once your service is terminated and the port is completed, you will remain responsible for all charges and fees through the end of that billing cycle, including any cancellation fees. If a port is unsuccessful for any reason, your service and your agreement with us will not terminate, you will remain a TheNewNet customer, and you will continue to be responsible for all charges and fees associated with your TheNewNet service.

**2.11 Service Distinctions.**

The Service is not a traditional 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 ISP or broadband service. Other things may affect Service, such as maintenance. TheNewNet will act in good faith with a view to minimizing disruptions to your use of and access to Service. Important distinctions exist between a traditional telecommunications service and our Service, and our Service is subject to different regulatory treatment than a traditional telecommunications service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies.

**2.12 Ownership and Risk of Loss.**

You will own 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.

**2.13 No 0+ or Operator Assisted Calling; May Not Support x11/8xx Calling.**

The Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls, 900 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.

**2.14 No Directory Listing.**

The phone numbers you obtain from us will not be listed in any telephone directories. 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 look up your address.

**2.15 Change of Number.**

You have no property right in any phone number assigned to or used by you. We shall be entitled to change any such number where we determine, in our sole discretion, that such a change is necessary. We shall give you reasonable advance written notice of such a change, except in cases of emergency, where oral notice shall be given.

**2.16 Incompatibility with Other Services.****(a) Home Security Systems.**

The Service may not be compatible with home 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 security system with the Service.

**(b) Certain Broadband, Cable Modem and Other Services.**

You acknowledge that the Service presently is not compatible with AOL cable broadband service and there may be other services with which the Service may be determined to be incompatible. 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 or conditions regarding the compatibility of the Service with any particular broadband service.

**2.17 Customer Service.**

We offer varying types and levels of customer service depending upon a number of factors, including the Service you are using and the problems you are experiencing. For more information on our customer service options, please review the "Contact us" section of our website located at [www.TheNewNet.ca](http://www.TheNewNet.ca). We assume no obligation to provide support services for any third party products or services, or problems with the service caused by third party products or services. Unless you have entered into a separate services agreement with us, we may change the customer service options at any time.

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

**3.1 Billing.**

When the Service is activated, you must provide us with a valid email address and a payment method that we accept. We reserve the right to stop accepting your payment method or your payments. If your payment method expires, you close your account, your billing address changes, or your payment method is cancelled and replaced on account of loss or theft, you must advise us at once. We will bill all charges, fees, applicable taxes and surcharges for each Service Term 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 payment method, including but not limited to:

activation fees; Service fees; usage charges; international usage charges; advanced feature charges; premium services/Add ons; equipment purchases; taxes; disconnection fees; and shipping and handling charges.

The amount of such fees and charges shall be published on our website and may change from time to time. TheNewNet may introduce new products and services at special introductory pricing. Introductory pricing may change at TheNewNet's discretion. Where required by law, notification of invoices will be sent to you via your email address on file with us. We reserve the right to bill at more frequent intervals if the amount you owe to us at any time exceeds \$50. TheNewNet bills usage charges in full minute increments that are rounded up to the next full minute unless otherwise set forth in the rate schedules found on our website. TheNewNet bills fractional usage charges in full cents that are rounded up when the value is \$.005 or more and down when the value is less than \$.005, unless otherwise set forth in the rate schedules found on our website.

The above fees are defined as follows:

- Activation Fee - This fee covers charges for setting up your account and activating you on our system.
- Service Fee - This is the basic charge associated with your service. This fee includes the calling charges defined by your plan, the features associated with your plan and basic account services.
- Usage Charges - If you exceed the number of calling minutes on your plan, TheNewNet will bill you for the minutes you use above your allowance. TheNewNet also bills for calls to directory assistance and other information services.
- International Usage Charges - These are the fees associated with calls to locations outside of Canada and the U.S.
- Advanced Features, Add-Ons, Premium Services - TheNewNet charges additional fees for enhanced features, add-ons, and other added products and services.
- Equipment Purchases - In most instances, you will pay for equipment associated with your TheNewNet service with your payment method. However, there may be occasions when TheNewNet will offer you the option to bill equipment to your account.
- Taxes - TheNewNet is required to bill and collect local, provincial and federal taxes imposed on TheNewNet customers by the various taxing authorities. TheNewNet passes all taxes it collects on to the appropriate taxing authority.

### **3.2 Billing Disputes.**

You must notify us in writing within seven (7) days after receiving your statement from your credit card issuer if you dispute any TheNewNet 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 directed to TheNewNet Communications Inc.

Customer Care Billing Department  
TheNewNet Communications Inc.  
111 Roswell Dr  
Courtice, ON, Canada L1E3K1

### **3.3 Payment and Collection.**

**(a) Payment.** Your subscription to the Service authorizes us to collect from your payment method. This authorization will remain valid until thirty (30) days after we receive written notice from you terminating our authority to charge your payment method, whereupon we will charge you for the disconnection fee, if applicable, and any other outstanding charges and disconnect your Service. We may disconnect your Service at any time in our sole and absolute discretion if any charge to your payment method is declined or reversed, your payment method expires and you have not provided us with a valid replacement payment method or in case of any other non-payment of account charges.

**(b) Collection.** If your Service is disconnected, 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 legal fees and expenses.

### **3.4 Disconnection; Discontinuance of Service.**

We reserve the right to suspend or discontinue the Service generally, or to disconnect your Service, at any time in our sole and absolute discretion. If we discontinue the Service generally, or disconnect your Service without a stated reason, you will only be responsible for charges accrued through the date of disconnection, including a pro-rated portion of the final Service Term charges. If your Service is disconnected on account of your breach of any provision of this Agreement, you will be responsible for all charges through the end of the current Service Term, including unbilled charges, plus the disconnection fee, if applicable, all of which will immediately be due and payable.

TheNewNet will pursue collection for unpaid amounts on disconnected accounts and may report to and exchange credit and personal information with any credit/consumer reporting agency and financial institution relating to this Agreement.

### **3.5 Taxes. Federal, provincial, municipal, local or other governments may assess taxes, surcharges and/or fees on your use of TheNewNet service.**

These charges may be a flat fee or a percentage of your TheNewNet 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, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility, goods and services, harmonized 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 payment method 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.

### **3.6 Disconnection Fee (Applies only to Residential and Business Plan Customers).**

You will be charged a disconnection fee of \$49.99 CDN per voice line if your Service is disconnected subject to applicable federal, provincial and local laws. However, the disconnection fee will be waived if your Service is disconnected after one (1) year following your activation date.

## **4. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES**

### **4.1 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 voice 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.

### **4.2 Disclaimer of Liability for Damages.**

IN NO EVENT WILL THENEWNET Communications Inc, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, COMPENSATORY OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE, INCLUDING INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE OR TO OBTAIN EMERGENCY HELP. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY OR CONDITION, PRODUCT LIABILITY, TORT (INCLUDING NEGLIGENCE), INTELLECTUAL PROPERTY INFRINGEMENT, STRICT LIABILITY, FUNDAMENTAL BREACH, BREACH OF A FUNDAMENTAL TERM AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT WE WERE INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

### **4.3 Indemnification and Survival.**

**(a) Indemnification.** You shall defend, indemnify, and hold harmless TheNewNet, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, legal fees and expenses) by, or on behalf of, you or any third party or user of the Service, relating to this Agreement or the Services, including, without limitation, 911 Dialing, or the Device.

**(b) Survival.** The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive.

### **4.4 No Warranties on Service.**

To the extent permitted by applicable law, WE MAKE NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, REASONABLY ACCEPTABLE QUALITY, FITNESS OF THE SERVICE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY OR CONDITION ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY OR CONDITION THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, WE PROVIDE NO WARRANTY OR CONDITION THAT THE SERVICE OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER THENEWNET 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 THIS AGREEMENT OR 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 THENEWNET'S OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY THENEWNET OR THENEWNET'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OR CONDITION OF ANY KIND.

#### **4.5 Device Warranties (Applies only to Residential and Business Plan customers).**

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

**(b) No Warranty.** IF A LIMITED WARRANTY DID NOT COME WITH YOUR DEVICE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU ARE ACCEPTING THE DEVICE "AS IS". YOUR DEVICE IS NOT ELIGIBLE FOR REPLACEMENT, REPAIR OR REFUND AFTER THE MONEY BACK GUARANTEE PERIOD.

**(c) Disclaimer.** To the extent permitted by applicable law, OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE AND THE RETAIL CUSTOMER LIMITED WARRANTY EXPRESSLY SET FORTH HEREIN, WE MAKE NO WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OR CONDITION OF MERCHANTABILITY, REASONABLY ACCEPTABLE QUALITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY OR CONDITION ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY OR CONDITION 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 OR CONDITION SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE.

#### **4.6 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.

#### **4.7 Content.**

You will be liable for any and all liability that may arise out of the content transmitted by or to you or any person, whether authorized or unauthorized, using your Service or Device (each such person, a "User"). You shall ensure 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.

## **5. MISCELLANEOUS**

### **5.1 Governing Law.**

The Agreement and the relationship between you and us is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein 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 5.2, you shall submit to the personal and exclusive jurisdiction of the courts located within the Province of Ontario and waive any objection as to venue or inconvenient forum.

### **5.2 Mandatory Arbitration and No Jury Trial.**

Except to the extent contrary to applicable law, any dispute or claim between you, any member of your household 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 a Canadian arbitration organization of our choosing. The arbitration shall take place in Toronto, Ontario and shall be conducted in English. 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. 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, except to the extent such a limitation is prohibited by applicable law. All claims shall be arbitrated individually. Except to the extent contrary to applicable law, 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, ONTARIO.

### **5.3 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.

### **5.4 Entire Agreement.**

This Agreement, including any future modifications as may occur within the terms of the Agreement, and the rates for Services found on our

website constitute the entire agreement between you and TheNewNet and govern the use of the Service by you, members of your household, guests and employees. This Agreement supersedes any prior agreements between you and TheNewNet and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

#### **5.5 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.

#### **5.6 French Language.**

The parties confirm that it is their express wish that this agreement, as well as any other documents relating to this agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté expresse que cette convention, de même que tous les documents s'y rattachant, y compris tous avis, annexes et autorisations s'y rattachant, soient rédigés en langue anglaise seulement.

## **6. FUTURE CHANGES TO THIS AGREEMENT**

We may change the terms and conditions of the Service and this Agreement, as well as amounts charged under this Agreement, from time to time. Notices will be considered given and effective on the date posted on [www.TheNewNet.ca](http://www.TheNewNet.ca), or as otherwise may be required by applicable law. Subject to applicable law, 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 or otherwise amended in accordance with applicable law, supersedes all previously agreed to electronic and written terms of service, including, without limitation, any terms included with the packaging of the Device and also supersedes any written terms provided to Retail Customers in connection with retail distribution, including, without limitation, any written terms enclosed within the packaging of the Device. If this Agreement is amended and you do not wish to accept the amendment, you may terminate the Agreement as provided in Section 2.1.

## **7. PRIVACY**

#### **7.1 Network Security.**

TheNewNet Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. TheNewNet is not liable for any lack of privacy which may be experienced with regard to the Service. Please refer to our Privacy Policy at [www.TheNewNet.ca](http://www.TheNewNet.ca) for additional information.

#### **7.2 Personal Information.**

To the extent that personal information is provided in connection with this Agreement, the customer confirms that he or she consents, and that all other necessary consents have been obtained, to the use, collection and disclosure by TheNewNet, assignees of TheNewNet, and their respective affiliates, agents and contractors for the following purposes: (i) providing products and services to the customer, (ii) contract management and administration, (iii) establishing a customer relationship and communicating with customers, (iv) developing, implementing and managing products and services for customers, (v) assisting in law enforcement purposes and collecting unpaid debts, (vi) protecting, managing and promoting their business interests and activities; (vii) providing information to the customer on other products and services which may be available; and (viii) otherwise as required or permitted by law or this Agreement. The customer may withdraw his or her consent in respect of clause (vii) above, without affecting his or her other arrangements with TheNewNet, by notifying TheNewNet's Privacy Officer in writing at [privacyofficer@TheNewNet.ca](mailto:privacyofficer@TheNewNet.ca). Further information on TheNewNet's privacy policies, as well as access to any such personal information for purposes of review, correction and updating, may also be obtained by writing to the Privacy Officer. For the purposes of this Section 7.2, "personal information" does not include the name, address and telephone number of a subscriber that appears in a publicly available telephone directory.

## **8. EXPORT CONTROLS**

You agree to comply fully with all relevant export laws and regulations of Canada, and without limiting the generality of the foregoing, you expressly agrees that you shall not export, directly or indirectly, re-export, divert, or transfer any portion of the Service or any direct product thereof to any destination, company or person restricted or prohibited by such laws or regulations.

## **9. TheNewNet Communications Inc. - Residential Usage Policy**

Calls included in your TheNewNet Residential home phone plan have maximum call duration of 4 hours per call, after which time the call will be disconnected.

TheNewNet Residential home phone plan is subject at all times to a limit of 3000 minutes in aggregate during each monthly billing cycle for outgoing inclusive local and long distance calls anywhere in Canada, the US and Puerto Rico and for calls to international countries specified in the Unlimited Plans. Calls between TheNewNet subscribers are excluded from this policy.