



Terms and Conditions

When a Customer (“You”) signs a NETFONE Customer Agreement, Customer agrees to pay for NETFONE Service and abide by the initial and subsequent Terms and Conditions, and all other NETFONE orders, agreements, and policies referred to directly or indirectly by the NETFONE Customer Agreement. All references to “NETFONE Service” include, without limitation, communication transmissions, access to and use of software and the NETFONE web site.

1 THE SERVICE

1.1 GENERAL DESCRIPTION OF SERVICE: NETFONE Service is an alternative to traditional telephone service. Some features of NETFONE Service work in a similar fashion to traditional business telephone service, some do not correspond to any existing traditional service, and some features may work differently than in traditional service, or may not work at all. You are responsible for evaluating the features of NETFONE Service as compared to traditional service. In particular, you must carefully note that 911 Emergency Calling Services, where available, using NETFONE are not the same as traditional services, and that under certain conditions may not work at all.

NETFONE Service is subject to different regulatory treatment than telephone service. This treatment may limit or otherwise affect your rights of redress before Federal, State or Provincial telecommunications regulatory agencies.

1.2 RESALE PROHIBITION: You are not to resell or transfer the NETFONE Service to any other entity for any purpose, without express written permission from NETFONE in advance.

1.3 SERVICE ABUSE: You agree that the NETFONE Service Plans do not confer the right to use the service for auto-dialing, continuous or extensive call forwarding, telemarketing (including without limitation charitable or political solicitation or polling), fax broadcasting or fax blasting. NETFONE reserves the right to immediately terminate or modify the Service, if NETFONE determines, in its sole discretion, that your Service is being used for any of the aforementioned activities.

1.4 LEGAL USE OF SERVICE: You agree to use NETFONE Service only for lawful purposes. This means that you agree not to use it for transmitting or receiving any communication or material of any kind when in NETFONE’s sole judgment the transmission, receipt or possession of such communication or material:

- (i) would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, province, national or international law or
- (ii) encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, province or international law.

NETFONE reserves the right to terminate your NETFONE Service immediately and without advance notice if NETFONE, in its sole discretion, believes that you have violated the above restrictions. If NETFONE terminates your service for this reason, you will be responsible for the full month's NETFONE Service charges to the end of the current month, including without limitation unbilled charges, plus any related cancellation fees from NETFONE suppliers, all of which immediately become due and payable.

You are liable for any and all use of NETFONE Service by yourself and by any person making use of the Service provided to you and agree to indemnify and hold harmless NETFONE against any and all liability for any such use. If NETFONE, in its sole discretion believes that you have violated the above restrictions, NETFONE may forward the objectionable material, as well as your communications with NETFONE and your personally identifiable information to the appropriate authorities for investigation and prosecution and you hereby consent to such forwarding.

1.5 NETFONE AUTHORIZED SERVICE PROVIDERS:

Business customers: NETFONE provides local sales, installation, training, and maintenance through NETFONE Authorized Service Providers. You may contact NETFONE directly to verify that a particular company is a NETFONE Authorized Service Provider.

Residential customers: only sales are handled through Authorized sales channel. Installation is handled by customer, no training is expected and customer support is available directly through NETFONE.

1.6 ACCESS TO YOUR PREMISES:

Business customers: NETFONE or its Authorized Service Providers may need to install and thereafter occasionally change certain facilities at your premises in order to provide Service (“**NETFONE Facilities**”). Only NETFONE Authorized Service Providers may install, rearrange, move, remove, disconnect, repair, or otherwise touch NETFONE Facilities. You agree to maintain the proper environment for NETFONE Facilities and to not allow any encumbrances on them. You will give us and our contractors reasonable access to your premises as needed and maintain safe working conditions for us.

Residential customers: No access to customer premise is expected.

1.7 APPROVED EQUIPMENT: You must use equipments that are compatible with NETFONE Service, including, but not limited to, wiring, VoIP handsets, and network switches and routers. You assume all risks associated with the use of equipment that is (a) not obtained directly from NETFONE (b) not obtained from one of our authorized dealers and (c) is either not listed as compatible on our web site or not approved by us in writing before installation. You warrant and represent that you possess all required rights, including software and/or firmware licenses, to use that equipment with NETFONE Service and you will indemnify and hold harmless NETFONE against any and all liability arising out of your use of such equipment with NETFONE Service.

1.8 LOCAL ACCESS FACILITIES: NETFONE services is carried over the public internet. Although in many circumstances such calls will be of comparable quality to those made using the standard access arrangements, in some situations the quality of calls will be lower than regular PSTN connections. You acknowledge that the quality of some or all calls may be lower than expected when using the public internet, and that NETFONE will not be able be liable to you or any third parties for any resulting problems in using the service. You acknowledge NETFONE will not be liable for damages even if NETFONE attempts to assist you in identifying the source and possible solutions to any service problems you experience.

1.9 LOSS OF NETFONE SERVICE: You acknowledge and understand that NETFONE Service does not function in the event of power failure. You also acknowledge and understand that NETFONE Service requires a fully functional local access connection to NETFONE's managed IP Network or the public Internet. In the event of an outage or termination of the local access, NETFONE Service will not function, but you will continue to be billed for the Service unless and until you or NETFONE terminate the Service in accordance with your Agreement with NETFONE. Should there be an interruption in the power supply or a local access outage, the Service will not function until power is restored or the local access outage is cured. A power failure or disruption may require you to reset or reconfigure equipment prior to utilizing the Service. Power disruptions or failures or local access outages will also prevent dialing to emergency service numbers including 911 (should 911 service be supported on NetFone Service in your market area). Should NETFONE suspend or terminate your NETFONE Service, your NETFONE Service will not function until such time as NETFONE restores your NETFONE Service (which may require payment of all invoices and reconnection fees owed by you or cure of any breach by you of your Agreement with NETFONE).

1.10 COPYRIGHTS, TRADEMARKS, UNAUTHORIZED USAGE: The NETFONE Service and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service and all Services, information, documents and materials on NETFONE's web sites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All web sites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") of NETFONE are and shall remain the exclusive property of NETFONE and nothing in your Agreement shall grant you the right or license to use any of such marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided to you in conjunction with providing the Service, other than a nontransferable, revocable license to use such firmware or software in unmodified object code form. 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.

1.11 TAMPERING WITH NETFONE SERVICE: You agree not to hack or disrupt the NETFONE Service or to make any use of NETFONE Service that is inconsistent with its intended purpose or to attempt to do so.

1.12 THEFT OF NETFONE SERVICE: You agree to notify NETFONE immediately, in writing or by calling the NETFONE customer support line (available in the support section of NETFONE web site www.netfone.ca), if you become aware at any time that your NETFONE Service is being stolen or fraudulently used. When you call or write, you must provide your account number and a detailed description of the circumstances of the fraudulent use of your NETFONE Service. Failure to do so in a timely manner may result in the termination of your NETFONE Service and additional charges to you. Until such time as NETFONE receives notice of the theft or fraudulent use, you will be liable for any and all stolen Service or fraudulent use of the Service.

1.13 NUMBER TRANSFER: Upon termination of NETFONE Service you may request that NETFONE release telephone numbers used in providing your NETFONE Service to another service provider. NETFONE will release said telephone provided that:

- (i) The new service provider is able to accept such numbers, and
- (ii) Our PSTN connectivity provider is able to commit to such transfer, and
- (iii) Your NETFONE account has been terminated, and
- (iv) Your NETFONE account is completely current including payment for all charges and disconnect fees.

1.14 X11 CALLING: NETFONE Service may not support 211, 311, 511, 611, 711, 811 and 911 services in one or more NETFONE service areas.

2 ACCEPTANCE, ACTIVATION, INSTALLATION, AND MAINTENANCE

2.1 ACCEPTANCE AND ACTIVATION: Acceptance of a Service Order is in NETFONE's sole discretion. We will use commercially reasonable best efforts to install facilities and activate Service by the activation date.

Business users: After we accept your Order, we may place orders with our suppliers, including, without limitation, broadband access circuit providers, in order to activate Service. Any subsequent change in, or other action (including expedite requests) that you take with respect to, the Order may give rise to charges from our supplier(s), even if the supplier's circuit or service has not yet been installed, and **YOU WILL BE LIABLE FOR ANY SUCH CHARGES**. If you do anything that delays Service activation beyond the Activation Date, then **YOU WILL BE LIABLE TO US FOR ALL SERVICE-RELATED COSTS THAT WE INCUR FROM AND INCLUDING THE ACTIVATION DATE UNTIL SERVICE IS ACTIVATED**.

Residential users: We will activate the service and ship the VOIP terminal and assist the customer by phone or email to install their service.

2.2 INSTALLATION BY NETFONE:

Business users: NETFONE's standard practice is to oversee all aspects of installation and activation of service, for which you will be charged applicable installation and activation fees. NETFONE provides these services through NETFONE Authorized Service Providers. You are not required to purchase installation and activation services from NETFONE.

Residential users: Customer is expected to provide for their own installation. NETFONE will provide regular phone and email support.

2.3 INSTALLATION BY OTHERS: This section applies to business users. You have the right to have other providers perform installation and activation of local access and customer premise equipment. All such installations must conform to NETFONE installation guidelines. You agree that NETFONE will not be responsible for service problems arising from installations by others on your behalf. You further agree that NETFONE will bill you for facilities arranged and installed by NETFONE on your behalf, including but not limited to T-1 or DSL Lines, even if installation by other providers you have selected is delayed and prevents your use of NETFONE Service.

2.4 LACK OF ADEQUATE FACILITIES: You agree that lack of technically adequate or economically feasible broadband facilities to your premises, other facilities, incomplete or inaccurate information, or other operational impediments (including technical lack of, or lack of economically feasible, local telephone numbers), may preclude or delay activation, maintenance or repair of Service.

2.5 MAINTENANCE: We will provide support and maintenance to you under the Service Level Agreement in Section 3 below.

3 SERVICE LEVEL AGREEMENT

3.1 GENERAL: This Service Level Agreement ("SLA") describes our Service availability commitment. This SLA also describes our customer support and maintenance practices for NETFONE Service. This SLA will remain in effect during the life of the Customer Agreement to which it is attached. However, changes in the marketplace or our business operations may require changes in this SLA. Consequently, we may occasionally modify this SLA, and the changes will apply to any later Service Order.

3.2 SERVICE AVAILABILITY, CREDITS, AND EXCEPTIONS: Our goal is to provide NETFONE Service availability of 99.9%. This is roughly equivalent to the NETFONE Service being unavailable to you for 9 hours or less in a calendar year. NETFONE will provide you with a credit for NETFONE Service interruption provided that:

- (i) You report the interruption using your customary process of reporting, and
- (ii) The interruption lasts 15 minutes or more, and
- (iii) You request the credit in writing within three days after first reporting the interruption for which credit is claimed, and
- (iv) Your NETFONE account is completely current.

NETFONE will compute the amount of the credit as follows:

- (v) The total minutes of an interruption will be counted beginning when you report it and ending when we restore Service, and
- (vi) Credit for all separate interruptions exceeding 15 consecutive minutes that happen within a calendar day will equal 1/30 of your monthly charge for the affected Service for business users. For residential users, a credit will be issued that is proportional to the duration of the interruptions, exceeding 15 minutes.

Credits are not available when the interruption is due to any of the following:

- (vii) Slow access, busy circuits or other network and/or switching capacity shortages that are beyond our reasonable control, or
- (viii) Previously scheduled maintenance outages, or
- (ix) You, your equipment or any authorized or unauthorized user of your Service, or any other cause within the your control, or
- (x) Use of equipment that is not compatible with Service, or
- (xi) Preventing fraud or unlawful conduct or a breach of your Customer Agreement, or
- (xii) Failure or malfunction of equipment or applications not owned, managed or controlled by us (including for example, fiber cuts, tandem failures, Internet service providers, Cable, DSL/ATM/Frame Relay/T1 service providers, or telecommunications carriers), or
- (xiii) Any cause beyond our reasonable control (including compliance with a governmental order).
- (xiv) Your internet service is down or communication between your device(s) and our equipment is impaired because of failure in the internet.

3.3 PROBLEM RESOLUTION: NETFONE will try to promptly resolve any situation or condition that has caused a Service interruption to the extent that the fault

involves our network. Even if no credit is available, NETFONE will use reasonable efforts to seek a prompt resumption of Service whenever such efforts have a reasonable likelihood of success.

3.4 SCHEDULED AND UNSCHEDULED MAINTENANCE: NETFONE will occasionally perform maintenance activities in order to maintain or improve Service. These activities include, without limitation, tests, adjustments and inspections, and substituting, changing or rearranging equipment or facilities.

These activities will occur both on a scheduled basis and in response to unanticipated Service-affecting events. NETFONE will use commercially reasonable efforts to restrict these activities to times outside of normal business hours. However, there may be times when circumstances require that they be performed during business hours.

NETFONE will use commercially reasonable efforts to provide you with reasonable notice of Service-affecting activities that occur in the normal operation of our business.

4 TRAINING

4.1 GENERAL: For business user, Initial and ongoing training in the use of NETFONE Service is provided through NETFONE Authorized Service Providers. You are responsible for determining the level of training that you will need, and the fees which you will pay for that training.

5 911 EMERGENCY SERVICE

WE CURRENTLY DO NOT HAVE ANY FORM OF 911 SERVICE. PLEASE NOTE THAT 911 SERVICE WILL BE GRADUALLY PHASED IN THE DIFFERENT MARKETS THAT NETFONE SERVICES. EMERGENCY 911 SERVICE MAY OR MAY NOT BE OFFERED IN YOUR AREA BASED ON THE SOLE DISCRETION OF NETFONE. 911 SERVICE MAY BE SUBJECT TO ADDITIONAL COST. YOU WILL BE UPDATED WHEN 911 SERVICE BECOME AVAILABLE IN YOUR AREA. THE SERVICE AREAS WHERE 911 SERVICE IS SUPPORTED (AND TYPE OF FEATURES) IS AVAILABLE IN <http://www.netfone.ca/911/>. WHERE 911 SERVICE IS AVAILABLE FROM NETFONE, IT IS SUBJECT TO THE TERMS BELOW.

5.1 NETFONE 911 SERVICE DIFFERS FROM TRADITIONAL 911 SERVICE: You must carefully note that NETFONE 911 Service, where available, differs in significant ways from that provided by local telephone companies.

5.2 DIFFERENT ROUTING: A 911 Call made using NETFONE Service may not be routed to the same Public Safety Answering Point (PSAP) or emergency personnel that you would expect to reach using traditional 911 service.

5.3 LACK OF AUTOMATED NUMBER IDENTIFICATION: A 911 Call made using NETFONE Service may or may not be able to automatically provide your phone number to the Public Safety Answering Point (PSAP) that answers your call. You

acknowledge and understand that PSAP and emergency personnel may or may not be able to identify your phone number. This means that they may not be able to call you back if the call is unable to be completed, is dropped or disconnected, or if you are unable to speak to tell them your phone number.

5.4 LACK OF AUTOMATIC LOCATION IDENTIFICATION: NETFONE Service may be unable to transmit identification of your physical address to the Public Safety Answering Point (PSAP) and local emergency personnel for your area when you dial 911. You acknowledge and understand that you will need to state the nature of your emergency promptly and clearly, including your location, as PSAP and emergency personnel will NOT have this information. You acknowledge and understand that PSAP and emergency personnel will not be able to find your location if the call is unable to be completed, is dropped or disconnected, if you are unable to speak to tell them your location.

5.5 UNAVAILABLE DURING POWER OR ACCESS OUTAGE: You will not be able to call 911 if power or local access facility outage prevents the NETFONE Service from working.

5.6 NOTIFICATION TO NETFONE SERVICE USERS: You agree to advise all users and potential users of the NETFONE Service on your premises that 911 Service may not function as expected. NETFONE strongly suggests that you post a notice next to each handset explaining how to make 911 calls in an emergency.

5.7 ALTERNATIVE 911 ARRANGEMENTS: You agree that it is your responsibility to decide whether it is advisable to keep one or more public telephone system lines available for 911 Emergency Service, and agree that NETFONE will bear no liability whatsoever to you and/or third parties for your decision.

5.8 NETWORK CONGESTION AND REDUCED SPEED FOR ROUTING AND ANSWERING 911: You acknowledge and understand that there is a greater possibility of network congestion and/or reduced speed in the routing of a 911 communication made utilizing your NETFONE Service as compared to traditional 911 dialing over traditional public telephone networks.

You acknowledge and accept that NETFONE relies on third parties for the forwarding of information underlying such routing, and accordingly NETFONE and its third party provider(s) disclaim any and all liability or responsibility in the event such information or routing is incorrect. NETFONE or its officers or employees, may not be held liable for any claim, damage, or loss. You hereby waive any and all such claims or causes of action, arising from or relating to 911 dialing unless it is proven that the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct on the part of NETFONE.

6 TERM AND TERMINATION

6.1 INITIAL TERM: Your Agreement begins on the Date of the Customer Agreement Date and continues for the initial term identified in your Customer Agreement.

6.2 CUSTOMER DISSATISFACTION:

Business users: If you are dissatisfied with NETFONE Service, you may terminate this Agreement upon written notice to us within 30 days after the Service Activation Date. If you terminate your service, you may return the equipment acquired or rented from NETFONE in original condition with no scratches or damage and in original packing material. We will issue you a credit equivalent to the amount you paid to NETFONE excluding any long distance charges. You are still responsible for installation fees owned to any third parties.

Residential users: If you are dissatisfied with NETFONE Service, you may terminate this Agreement upon written notice to us at anytime. If you terminate your service, you may return the equipment acquired or rented from NETFONE in original condition with no scratches or damage and in original packing material. If you terminate within 30 days after the Service Activation Date, we will issue you a credit equivalent to the amount you paid to NETFONE excluding any long distance charges. If you terminate after 30 days, you will be responsible for charges until the end of the month.

6.3 OTHER GROUNDS: In addition to termination rights provided elsewhere in this Agreement, either of us may terminate this Agreement upon written notice to the other if the other:

- (i) materially breaches this Agreement and does not cure the breach within 30 days after written notice of the breach or
- (ii) makes an assignment for the benefit of creditors, or (only for business users)
- (iii) is assigned a Moody's debt rating of Caa or lower or the equivalent thereof (only for business users), or
- (iv) makes a statement in writing of a general inability to pay debts when due.

We may also terminate this Agreement upon written notice to you if you

- (v) breach your obligations under Section 1 (The Service) above; or
- (vi) fail to pay any non-disputed portion of any bill on or before the Due Date, and further fail to make such payment within 15 days after written notice of nonpayment.

But, we may not treat as a breach of this Agreement any failure to comply with any amendment to either our Website Terms or Acceptable Use Policy when the failure occurs within 10 business days after the amendment is posted on our website.

6.4 EXTENSION OF SERVICE: We will continue to provide NETFONE Service for successive 30-day terms after your (Business Customer) Agreement terminates (“**Extension Period**”) at our then current monthly prices; so long as you continue to fully comply with your obligations under your Agreement. Our respective rights and duties under the section above (Effects) will apply at the end of the Extension Period, except that any termination charge that had been due when the Agreement first terminated will be reduced by amounts you will have paid for Service during the Extension Period. If you do not wish to extend your service, you should notify us before the expiry of the agreement. This will ensure that you will not be disconnected because of oversight on your side to advise us about continuation of service.

7 BILLING, PAYMENT, DISPUTES, AND TAXES

7.1 PRICE AND FEES: The prices set forth on the NETFONE Retail Price List will apply throughout the term of your Agreement. The prices do not include any taxes or other regulatory or governmental charges for NETFONE Service, and you agree to pay all such other fees on the billing statement.

7.2 BILLING, PAYMENT, AND DISPUTES:

Business Customers: We will bill in advance for recurring charges and in arrears for any usage-coverage and other nonrecurring charges, except that the first billing statement will include the first period’s recurring charges. Payment is due upon bill receipt (“**Due Date**”). Any amount not paid within 30 days after the Due Date is overdue and will incur a late payment fee equal to the lesser of 1.5% per month or the maximum amount permitted by law, until paid in full. You will be liable to us for any fees or expenses, including attorney’s fees, which we incur in collecting any overdue charge. A billing statement is deemed correct and payable in full unless disputed in writing within 30 days after receiving the bill. In case of a dispute, you must pay the undisputed portion by the Due Date to avoid a late payment fee on that amount. The Due Date for any disputed amount that is determined to be correct will be 7 days after we notify you that the dispute as to that amount has been resolved. For smaller-size accounts, NETFONE require customer to move from payment by checks to credit card payment.

Residential Customers: All residential customers shall be on credit card payment. We will bill in advance for recurring charges and in arrears for any usage-coverage and other nonrecurring charges, except that the first billing statement will include the first period’s recurring charges. If your credit card is cancelled, you must provide us with a substitute card before the end of the month. If your credit card is declined, your international calling privileges are immediately suspended. You will be notified by email and you will have 48 hours to call our support line and supply us with a new credit card number. NETFONE may, on its sole discretion, move customers to a fully pre-paid model where customer must pre-pay for both regular service and maintain a balance in order to make long distance calls.

7.3 CREDIT VERIFICATION AND DEPOSITS: We may at any time (i) obtain your credit-related information, (ii) investigate your credit history, (iii) require you to

make or increase a deposit as a payment guarantee, and/or (iv) condition provision of Service on certain payment terms and conditions. We may also provide information about you to credit agencies. A deposit will accrue interest as required by law. We may apply any deposit against any amount you owe under this Agreement, but you may not use a deposit to pay any bill without our prior written consent.

8 LIMITATIONS OF LIABILITY, REMEDIES AND INDEMNITIES

8.1 DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND WITH RESPECT TO ANY CAUSE WHATSOEVER: (i) OUR SUPPLIERS WILL NOT BE LIABLE TO YOU OR TO ANY PERSON USING SERVICE FOR ANY DIRECT DAMAGES AND (ii) YOU WILL NOT BE LIABLE TO US, AND WE AND OUR SUPPLIERS WILL NOT BE LIABLE TO YOU OR TO ANY PERSON USING SERVICE, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR REVENUES) OF ANY KIND, REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE AND THE FAILURE OF ANY ESSENTIAL REMEDY.

8.2 SERVICE SECURITY AND PRIVACY, MESSAGE CONTENT: You agree that communications transmitted using NETFONE Service may not be private or secure. You also agree that we will not be liable to you or any person using NETFONE Service for either (i) any real or perceived compromise in the privacy or security of communications, (ii) the content of any message sent using NETFONE Service, or (iii) the content or quality of information that you or any person access using NETFONE Service.

8.3 ACCESS TO EMERGENCY SERVICES. THE LIMITATIONS OF OUR LIABILITY AND OUR SUPPLIERS' LIABILITY SET FORTH ABOVE APPLY TO ANY LIABILITY WHATSOEVER, INCLUDING ANY CLAIM FOR INDEMNITY, WHETHER ASSERTED BY YOU OR ANY THIRD PARTY, FOR ANY PERSONAL INJURY OR DEATH OR FOR ANY PROPERTY LOSS OR DAMAGE OR FOR ANY INFRINGEMENT OR INVASION OF PRIVACY, CAUSED OR CLAIMED TO HAVE BEEN CAUSED BY THE USE OR ATTEMPTED USE OF NETFONE SERVICE TO ACCESS AN EMERGENCY SERVICE BY DIALING 911 OR ANY OTHER NUMBER.

8.4 CALLS OVER PUBLIC INTERNET: Our Service uses a configuration by which voice calls and/or voice call signaling traverse(s) the public Internet ("Internet Calls"), then you acknowledge and agree that, because we cannot control the voice-quality-impacting characteristics, availability and security of the Internet, we cannot guarantee voice quality for any Internet Calls or that Internet Calls can be made or will be secure.

In addition, and for the reasons stated in this section, you will not, and you will advise your end users not to, use Internet Calls to access emergency service by dialing 911 or any other telephone number, and you agree that NETFONE WILL HAVE NO

LIABILITY WHATSOEVER, INCLUDING ANY CLAIM FOR INDEMNITY, TO YOU OR ANY END USER FOR ANY INJURY OR DAMAGE CAUSED OR CLAIMED TO HAVE BEEN CAUSED BY THE USE OR ATTEMPTED USE OF INTERNET CALLS TO ACCESS AN EMERGENCY SERVICE.

8.5 UNCONTROLLABLE EVENTS: Neither of us will be liable to the other, and we and our suppliers will not be liable to you or to any person using NETFONE Service, for any failure to perform under this Agreement (except to make payments when due) due to any event or action outside of our respective reasonable control, including without limitation, acts of God, floods, fires, hurricanes, earthquakes, acts of war, labor actions, failure of a third party supplier to us or our suppliers, malfunction of the public internet, and changes in applicable laws and regulations.

8.6 WARRANTY DISCLAIMER: NETFONE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, OUR SUPPLIERS AND WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. OUR SUPPLIERS AND WE MAKE NO WARRANTY THAT SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, PRIVATE OR ERROR FREE; NOR DO OUR SUPPLIERS OR WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED THROUGH USE OF SERVICE OR THAT ANY DEFECT IN A SERVICE WILL BE CORRECTED. ACTUAL TRANSMISSION SPEEDS AND CHARACTERISTICS OF SERVICE MAY VARY FROM THOSE EXPECTED DUE TO OPERATIONAL CHARACTERISTICS OF THE EQUIPMENT OR FACILITIES USED.

8.7 INDEMNITIES.

8.7.1 We will indemnify and hold harmless you and your agents, from and against any third party claim (including attorneys' fees and expenses) that NETFONE Service infringes a third party's valid U.S. patent, copyright, trademark or trade secret; except that we will have no indemnity obligation to the extent that any claim is caused by the combination, operation or use of Service with any service, software, hardware or equipment not provided by either us, or one of our agents or suppliers when Service would not otherwise be infringing. If NETFONE Service becomes, or in our opinion may become, the subject of an infringement claim, we may in our sole discretion either: (i) procure for you the right to use Service; (ii) replace or modify Service to make it non-infringing; or (iii), if neither (i) or (ii) is commercially feasible, terminate this Agreement, on written notice to you, subject to Term and Termination above. We will not be liable for any costs or expenses incurred by you in connection with any potential claim of infringement without our prior written consent. THIS SECTION STATES OUR SOLE AND EXCLUSIVE LIABILITY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

8.7.2 Each of us will indemnify and hold harmless the other, and you will indemnify and hold harmless any of our suppliers, and the indemnified party's agents, from and against any third party claim for any and all loss, damages, liability, claims, costs and expenses (including attorneys' fees and expenses) arising, directly or indirectly, in whole or in part, out of the indemnifying party's performance or failure to perform under your Agreement. Your indemnity obligations include, without limitation, any third party claim arising from any use of NETFONE Service provided to you.

8.7.3 All indemnity rights under your Agreement are subject to the following: (a) the indemnitee must provide the indemnitor with prompt written notice of any claim; (b) the indemnitee must permit the indemnitor to assume and control the defense of any action; (c) the indemnitee may not enter into any settlement or compromise of any claim without the indemnitor's prior written consent, and (d) EXCEPT AS SPECIFICALLY PROVIDED OTHERWISE, THE LIMITATIONS SET FORTH "DAMAGES" ABOVE DO NOT APPLY TO THE INDEMNITY OBLIGATIONS SET FORTH IN THIS SUBSECTION. The indemnitee may, at its own expense, participate in the defense of any claim.

8.8 AUTHORIZED SERVICE PROVIDERS: NETFONE's limitations of liability, including all warranty disclaimers, apply also to the liability of any authorized NETFONE's Service Provider.

9 MISCELLANEOUS

9.1 BINDING AGREEMENT: This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, but neither party shall have the right to assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party; provided, however, that NETFONE may assign this Agreement without Licensee's consent to an affiliate or to any buyer of all or substantially all of the assets or majority voting control of NETFONE.

9.2 NOTICES: All notices hereunder must be in writing and delivered via facsimile or by registered mail or overnight courier to the addresses or facsimiles below or to such alternate address or facsimiles as may be designated by one party to the other in writing from time to time:

To: NETFONE
P.O. Box 76017
Coal Harbour Postal Outlet
Vancouver, BC, V6E 4T2
Canada

Attention: CUSTOMER CARE

Facsimile 604-662-7950
E-mail: support@netfone.ca

9.3 DISPUTE RESOLUTION: Any disputes between the Parties hereto arising out of or related to this Agreement shall be resolved in accordance with the following provisions. The venue for resolution of all disputes between the Parties shall be Vancouver, British Columbia, Canada.

9.3.1 In any claim or controversy arising out of or relating to this Agreement, the Parties shall attempt in good faith to resolve the matter through negotiation. Managers of the respective Parties having knowledge of the subject matter of the Agreement shall first meet in person or discuss on phone and make a good faith attempt to resolve such controversies or claims. If, after such good faith attempt, such managers cannot otherwise settle or resolve the claim or controversy, senior managers of each party with authority to settle the controversy and who are at a higher level of responsibility than the officers with direct responsibility for administering this Agreement shall meet in person or discuss on phone and make a good faith attempt to resolve or settle the matter. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this clause shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

9.3.2 If the claim or controversy cannot otherwise be settled by negotiation pursuant to the requirements terms set forth in Section 9.3.1 above, the claim or controversy will be finally settled by binding arbitration in Vancouver, British Columbia, Canada (or such other location as the Parties may agree) on an expedited basis under the Rules of Arbitration of the American Arbitration Association by one arbitrator appointed in accordance with those rules. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction.

9.3.3 In any arbitration pursuant to Section 9.3.2 above, and in any subsequent court action to obtain a judgment on the award of an arbitrator pursuant to Section 9.3.2 above, the prevailing party in the arbitration shall be entitled to receive from the other party all reasonable costs and expenses awarded by a court and/or incurred by such party in enforcing its rights under this Agreement, including without limitation, its costs and reasonable attorneys' fees.

9.4 REPRESENTATIONS AND ACKNOWLEDGEMENTS REGARDING CERTAIN LEGAL REQUIREMENTS: You represent and warrant that you are not a national of, or under the control of, any country that the United States has currently imposed an embargo of goods. You understand that, if you are an agency, department or entity of the U.S. Government ("**Government**"),

- (i) use, reproduction, release, modification or disclosure of software provided under this Agreement is restricted in accordance with Federal Acquisition Regulation ("**FAR**") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies,

- (ii) the software is a commercial product, which was developed at private expense, and
- (iii) use of the software by any Government agency, department or other agency of the Government is further restricted as set forth in this Agreement.

9.5 ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the Parties hereto and may not be amended, changed, or revised except by a duly authorized representative of NETFONE and with a 30 days notice. In case of changes that substantially affect the terms of this agreement, Customer may elect to terminate agreement within 90 days of the changes taking effect. This Agreement supercedes all previous written agreements, or unwritten agreements and understandings between the Parties hereto.

9.6 CONFIDENTIALITY AND PUBLICITY: This Agreement is confidential business information and may be disclosed to a third party only (a) when necessary to further your or our business purposes and (b) when the third party has executed a written agreement which imposes comparable confidentiality obligations and use restrictions. Neither of us may disclose the terms and conditions of this Agreement to a competitor of the other. Either of us may disclose the existence of this Agreement and the other's name for ongoing business promotional purposes.

9.7 GOVERNING LAW AND JURISDICTION: This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia, Canada, excluding its principles of choice of law or conflicts of law.