



## TERMS OF SERVICE FOR PACKET-TEL CORP. SERVICES

### 1. Agreement.

These terms and conditions ("**Terms of Service**") set out the rights, obligations and limitations of **Packet-tel Corp.** ("**Packetworks**" or "**us**" or "**we**" or "**our**") and you, the **Customer**, for fibre products ("**Customer Equipment**") and fibre services that Packetworks provides to you which are not regulated by the CRTC (collectively "**Services**"). These Terms of Service, together with (i) your Packetworks invoice for the Services and all terms listed therein; (ii) all applicable Packetworks service rules and policies referenced in these Terms of Service or to which you may be directed when you order or use the Services; and (iii) any specific terms attached at any time or incorporated by reference into these Terms of Service ("**Documents**"), form our agreement with you ("**Agreement**"). The Terms of Service will prevail to the extent of any conflict or inconsistency between the Documents and the Terms of Service. If you have signed or accepted a separate agreement with Packetworks related to the Services, then that agreement applies. Neither you nor a Packetworks sales or customer service representative, agent, dealer or employee may change this Agreement, and you may not rely on such changes. The Customer is solely responsible for the use of the Services by him/her and any other users ("**Users**") and shall: (a) take all necessary measures to ensure that the Services are used in accordance with this Agreement and (b) be liable for all consequences resulting from any breach of this Agreement. Customers and all Users are sometimes called "**you**" in this Agreement.

### 2. Charges, Billing & Payment.

You shall pay all applicable monthly service rates, access fees, usage charges, installation fees and/or activation fees, and other amounts, fees and charges, if any, together with all applicable taxes, identified to you when you purchase the Services or as otherwise identified to you by Packetworks from time to time ("**Charges**"). Unless otherwise set out on your Packetworks invoice, Charges will commence on the date of the initial activation of the Services. Packetworks will bill you monthly, and you are liable for and shall pay Packetworks when due, on a monthly basis, all invoiced Charges. Allow adequate time (typically 5-7 days if paying by mail or through a financial institution) for your payment to reach us and for us to process your payment before the required payment date. Packetworks may bill you for any Charge up to 12 months from the date that Charge was incurred. If payment is not **received** by Packetworks before your next invoice date, or within **30 days** of the date of any final invoice if the services have been terminated, you will be charged interest on the balance owing at a compound interest rate equal to 1.5% per month (18% per year), calculated and compounded monthly from the invoice date ("**Late Payment Charge**"). Packetworks may change the Late Payment Charge from time to time. If you question or dispute any Charge, you must do so within **90 days** of the disputed invoice date; otherwise, you will be deemed to have accepted all Charges. Unless otherwise set out on your invoice, no Charge disputed by you will be considered past due unless Packetworks reasonably believes your dispute is to evade or delay payment. Administrative charges, as set by Packetworks from time to time, may be assessed against you for administrative or account activities including collection efforts due to your non-payment or having a balance over your credit limit; returned or rejected payments; change of any personal identifier information; suspension, disconnection or restoration of Services. All administrative fees charged to you will form part of the Charges owed by you to Packetworks under this Agreement. You will ensure that your billing and payment information provided to Packetworks (including name, mailing address, residency, address, telephone number, credit card and bank account) remains current at all times. If you provide a credit card, bank account, or other pre-authorized payment method to Packetworks to make your monthly payments, you authorize Packetworks to charge your credit card or bank account the amount of any outstanding amounts and all Charges due under this Agreement.

### 3. Amendments/Changes.

To the extent not prohibited by applicable law, Packetworks may change the Services and/or this Agreement, including changing applicable charges, fees or other obligations; or any feature, content, structure or other aspect of any of the Services. Packetworks will notify you in advance of any change to

this Agreement and material change to your Services by posting a notice on [www.Packetworks.ca](http://www.Packetworks.ca), by mail, by sending notice via SIM or other message on your monthly invoice, or any other notice method likely to come to your attention. If you do not accept such change, your sole remedy is to terminate the Service to which such change applies. If you continue to use the Services after any such change is effective, to the extent not prohibited by applicable law, you expressly agree that you: (i) will be deemed to have accepted the change, with no additional written agreement or express acknowledgement required; (ii) specifically waive all statutory requirements for notice and express acceptance of such change except for those provided in this section; and (iii) will be responsible for the payment of all Services.

#### **4. Termination of Services and Default.**

You may contact Packetworks at Packetworks Customer Care (see end of Agreement) to terminate any Service. Termination is effective 30 days from the date you contacted Packetworks. You will be charged the applicable Charges for that 30 day termination period unless under **Contract**. Packetworks may without liability stop providing you with any or all of the Services and/or terminate this Agreement for any reason upon a minimum of 30 days prior written notice to you. If you breach any part of this Agreement, Packetworks may, as permitted by law and without liability: (a) enter upon your premises and take immediate possession of or require you to promptly return in proper working order and in good condition all Packetworks Equipment provided in connection with the Services; (b) accelerate all Charges and other amounts under this Agreement as due and owing as of the date of termination; and (c) terminate all Services and this Agreement by written or verbal notice to you and specify a final payment date for all amounts owing by you hereunder not earlier than 10 days (or such other date as is permitted by law) from the date of such notice.

#### **5. Suspension of Services.**

Upon reasonable advance notice to you, Packetworks may suspend any Service for a breach of this Agreement. Suspension does not change your obligation to pay for the Services.

#### **6. Special Payment Terms; Deposits and Alternatives.**

In exceptional circumstances, Packetworks may require you to pay the Charges on an interim basis, despite your monthly billing cycle, and you shall pay on or before the stipulated due date to avoid termination or suspension of your Services. Packetworks may require deposits from you at any time if you: (a) have no credit history with Packetworks and do not provide satisfactory credit information; (b) have an unsatisfactory credit rating with Packetworks due to payment practices in the previous 2 years regarding any Packetworks Services; or (c) present an abnormal risk of loss. Deposits will earn simple interest based on Bank of Montreal's monthly savings account rate in effect from time to time, calculated monthly on the last day of your monthly billing period, prorated for any partial month Packetworks holds the deposit. When the Services are terminated or the conditions justifying the deposit are gone, Packetworks will apply the deposit and any earned interest against the outstanding Charges or other amounts owing by Customer, and thereafter refund to Customer any balance of the deposit, plus interest, if any, earned.

#### **7. Obligation to Provide Service.**

Packetworks may at any time refuse without liability to provide any Services to you where Packetworks would have to incur unusual expenses such as, but not limited to, securing rights of way or for special construction. Packetworks may proceed to provide such Services to you if, upon Packetworks' request and agreement, you agree to pay an amount in respect of such expenses. Any such agreement shall be in writing and signed by you and Packetworks.

#### **8. Connections and Non-Packetworks Equipment.**

You must supply, install and maintain all facilities, software and equipment not provided by Packetworks ("**Non-Packetworks Equipment**"). You are responsible for all disruptions and damage caused by Non-Packetworks Equipment, including any effect on other customers' ability to receive Packetworks services, and Packetworks may take any action which it considers necessary to address that effect, including charging you for any costs that may ensue to remedy such effect. You are solely responsible for the state

of and all access to Customer Equipment, including a/c power, maintenance of security and privacy and all other risks involved in connection with the Customer Equipment.

#### **9. Packetworks Equipment; Packetworks Right to Enter Premises.**

All Packetworks Equipment (meaning any device, equipment or hardware owned or supplied by Packetworks and used in connection with the Services) will always remain Packetworks' property and you will: (i) take reasonable care of the Packetworks Equipment; (ii) not sell, lease, mortgage, transfer, assign or encumber the Packetworks Equipment; (iii) not move or re-locate the Packetworks Equipment, and (iv) immediately return all Packetworks Equipment to us at your cost upon termination of the Services to which the Equipment related. If you fail to comply with these obligations, you will pay us the undiscounted retail value of the Packetworks Equipment, together with any costs incurred by us in seeking possession of the Packetworks Equipment. Failure to do so will result in certain charges to you, as identified to you when you received such Packetworks Equipment. Packetworks will provide maintenance and repairs to Packetworks Equipment as required due to normal wear and tear.

Additional charges may apply for maintenance and repair work performed outside of regular working hours. You may also be charged for the cost of repairing or replacing the Packetworks Equipment if you have deliberately, negligently or by virtue of lack of reasonable care, caused loss, theft or damage to the Packetworks Equipment. In all cases, you are liable for all damage caused to Packetworks Equipment and facilities by you or by customer-provided equipment. You must immediately notify Packetworks of any loss, theft or damage of or to Packetworks Equipment. Packetworks may enter the premises on which the Services are, or are to be, provided, to install, inspect, repair, maintain, or remove the Packetworks Equipment, or to maintain, protect, investigate, modify or improve the operation of the Services, or to inspect and perform necessary maintenance in cases of network-affecting disruptions involving customer-provided facilities. You will obtain and provide to Packetworks consents from all necessary persons, except in emergencies or pursuant to a court order.

#### **10. Restrictions on Use of Service.**

You shall not:

- a) use the Services for anything other than your own personal use. You may not resell the Services, receive any charge or benefit for the use of the Services, or share or transfer the Services;
- b) use the Services or permit them to be used for a purpose or in a manner that is contrary to law, for any illegal purpose, including criminal offences, intellectual property infringement, harassment or interference with network operations; or to make annoying or offensive calls;
- c) use the Services or permit them to be used so as to prevent a fair and proportionate use by others;
- d) re-arrange, disconnect, remove, repair, modify or otherwise interfere with any Services, Packetworks Equipment or Packetworks facilities;
- e) attempt to receive any Service without paying the applicable fees and charges; and/or
- f) use any of the Services in a manner which bypasses, or attempts to bypass, Packetworks' network.

#### **11. Customer Liability for Calls.**

You are responsible for all calls originating from, and charged calls accepted at your telephone(s), regardless of who made or accepted them.

#### **12. Confidentiality of Customer Records; Personal and Credit Information.**

Unless you provide express consent, or disclosure is pursuant to a legal power, or is required in a medical, legal or security emergency or where there appears to be imminent danger to life or property and your consent cannot be sought in a timely manner, all information Packetworks keeps about you, other than your name, address and listed telephone number, is confidential and will not be disclosed by Packetworks to anyone other than: (a) you; (b) a person who, in Packetworks' reasonable judgment, is seeking the information as your agent; (c) another telephone company who provides you with telephone

service, or a company involved in supplying you with telecommunications, telephone or telephone directory related services, provided the information is required for that purpose and disclosure is made on a confidential basis with the information to be used only for that purpose; or (d) an agent retained by Packetworks in the collection of your account, provided the information is required for, and is to be used only for that purpose. Packetworks protects your personal information in accordance with the Packetworks Customer Privacy Policy available at [www.Packetworks.net](http://www.Packetworks.net). Packetworks' liability for disclosure of customer information contrary to this Section 12 is not limited by Section 14.

You will be deemed to have given your express consent where you provide: written consent; oral confirmation verified by an independent third party; electronic confirmation through the use of a toll-free number; electronic confirmation via the Internet; oral consent where Packetworks retains an audio recording of the consent; or consent through other methods, as long as an objective documented record of your consent is created by you or an independent third party.

### **13. Battery Backup.**

Packetworks will support and maintain the battery backup supplied as part of the optical delivery system for voice services throughout the contract period. Packetworks will notify the customer via telephone at a number supplied by the customer after one hour that the optical system in their home has switched to the battery and the time at which the switch was made. It is the responsibility of the customer to restore the AC power to the optical system before the battery drains (approx. 8 hours) and the telephone system ceases to function. If the battery drains, the telephone system will cease to function and no calls will be able to be made to or from the system including operator or 911 calls.

### **14. No Warranties, etc.**

Packetworks makes no warranties, representations, guarantees or conditions of any nature whatsoever, expressed or implied, including any warranty, representation, guarantee or condition of fitness for a particular purpose, merchantability, title or non-infringement, with respect to any of the Packetworks Equipment, the Customer Equipment (except as provided below) or the Services, and all warranties, representations, guarantees and conditions, expressed and implied, are, to the extent permitted by applicable law, hereby excluded. Customer Equipment is subject to the terms and conditions of any manufacturers' warranty or extended warranty plan you may have obtained on the purchase of the Customer Equipment. None of the Services are guaranteed to be error-free or uninterrupted and Packetworks shall not be liable to you or any other person for any damages, whether direct, indirect, special, consequential, exemplary, incidental, or any kind or for any reason whatsoever, arising out of any Service.

### **15. Limitation of Packetworks Liability.**

PACKETWORKS'S AND ITS PROVIDERS' LIABILITY FOR NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHER CAUSES OF ACTION, INCLUDING FUNDAMENTAL BREACH, TO THE EXTENT PERMITTED BY APPLICABLE LAW IS LIMITED TO PAYMENT, UPON REQUEST, FOR ACTUAL AND DIRECT DAMAGES OF A MAXIMUM AMOUNT OF THE GREATER OF \$20 AND AN AMOUNT EQUAL TO THE SERVICE FEES PAYABLE DURING ANY SERVICE OUTAGE. OTHER THAN THE FOREGOING PAYMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL PACKETWORKS (OR ITS PROVIDERS) BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES, INCLUDING DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, ECONOMIC, EXEMPLARY OR PUNITIVE DAMAGES INCLUDING LOSS OF DATA, LOSS OF INCOME, LOSS OF PROFIT OR FAILURE TO REALIZE EXPECTED SAVINGS ARISING DIRECTLY OR INDIRECTLY FROM PACKETWORKS'S (OR ITS PROVIDERS') NEGLIGENCE OR BREACH OF CONTRACT (INCLUDING FUNDAMENTAL BREACH OR OTHERWISE). Without limiting the generality of the foregoing, Packetworks is not liable for:

(a) any act or omission of a telecommunications carrier whose facilities are used in establishing connections to points which Packetworks does not directly serve;

- (b) defamation or copyright infringement arising from material transmitted or received over Packetworks' facilities; or
- (c) infringement of patents arising from combining or using customer-provided facilities with Packetworks' facilities. The limitations of liability set out above do not apply to damages resulting from physical injuries, death or damage to your premises or other property wholly caused by Packetworks' negligence.
- (d) failure of the service due to power or battery failure.

## **16. General.**

Packetworks is a federally-regulated undertaking and as such this Agreement, including all matters relating to its validity, construction, performance and enforcement, shall be governed by applicable federal laws and regulations of Canada and only those laws and regulations of the province in which your designated billing address is located, that are applicable to it. This Agreement is subject to amendment, modification or termination if required by such laws or regulations. If any provision in this Agreement is declared to be invalid or in conflict with any such law or regulation, that provision may be deleted or modified, without affecting the validity of its other provisions. This Agreement including the Documents, as amended, constitute the entire agreement between you and Packetworks and supersedes all prior agreements, written or oral, with respect to the same subject matter. Except as expressly stated herein, this Agreement cannot be modified or amended by waiver, course of dealing or otherwise. **Please note that your rights might vary by province.** Packetworks may transfer or assign all or part of this Agreement including any rights in accounts receivable at any time without prior notice or consent, but Customer may not assign or transfer this Agreement, its account or any Service without Packetworks' prior written consent. This Agreement has been drawn up in the English language at the express request of the parties. La présente convention a été rédigée en anglais à la demande expresse des parties. Your use of the Service represents evidence that you accept and agree with the terms and conditions of this Agreement. Packetworks is not responsible for failing to meet obligations due to causes beyond its reasonable control, including all force majeure events. The word "**including**" means including without limitation.

## **17. Intellectual Property.**

All trademarks, copyrights, brand concepts, names, logos and designs used by us are intellectual property assets, registered or unregistered, off or used under license by, Packetworks or its affiliates. All are recognized as valuable assets of their respective owners and may not be displayed or used by you in any manner for commercial purposes or copied in any manner whatsoever for any purpose.

## **18. TERMS APPLICABLE TO TELEPHONE SERVICE PROVIDED OVER INTERNET PROTOCOL (VoIP)**

18.1 Description: VoIP services allow you to make or receive telephone calls over the Internet to or from the public switched telephone network. The nature of VoIP telephone calls, while appearing similar to traditional telephone calling services, create unique limitations and circumstances, and you acknowledge and agree that differences exist between traditional telephone service and VoIP telephone services, including the lack of traditional 9-1-1 emergency services.

18.2 Ensuring Correct Functioning: Packetworks' VoIP Services may not function correctly, or at all, in the following circumstances:

- (a) If your Adapter or other Equipment fails or is not configured correctly;
- (b) In the event of an internet network outage or extended power failure;
- (c) If you tamper with or move your Adapter or other Equipment to a location other than your service address;
- (d) Following suspension or termination of your Service Agreement.

18.3 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 or calling card calls). The Service may not support x11 or 8xx numbers (other than certain specified dialing such as 9-1-1 and 4-1-1)

#### 18.4 Incompatibility with Other Services:

(a) Home Security Systems: The Service may not be compatible with all home security systems. You may be required to maintain a standard telephone connection (i.e. non-VoIP) through another 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 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.

#### 18.5 9-1-1 Emergency Services:

(a) 9-1-1 Service: Because of the unique nature of VoIP telephone calls, emergency calls to 9-1-1 through your VoIP service will be handled differently than traditional phone service. The following provisions describe the differences and limitations of 9-1-1 emergency calls, and you hereby acknowledge and understand the differences between traditional 9-1-1 service and VoIP calls with respect to 9-1-1 calls placed to emergency services from your account as described below.

(b) 9-1-1 Calling Procedures: When you make a 9-1-1 emergency call, the VoIP service will attempt to automatically route your 9-1-1 call through a third-party service provider to the Public Safety Answering Point ("PSAP") corresponding to your address of record on your account. However, due to limitations of the VoIP telephone services, your 9-1-1 call may be routed to a different location than that which would be used for traditional 9-1-1 dialing. For example, your call may be forwarded to a third-party specialized call centre that handles emergency calls. This call centre is different from the PSAP that would answer a traditional 9-1-1 call which has automatically generated your address information, and consequently, you may be required to provide your name, address, and telephone number to the call centre.

(c) Disconnections: You must not disconnect the 9-1-1 emergency call until told to do so by the dispatcher, as the dispatcher may not have your number or contact information. If you are inadvertently disconnected, you must call back immediately.

(d) Registration of Physical Location Required: You are responsible for providing, maintaining, and updating correct contact information (including name, residential address and telephone number) on your account with Packetworks. If you do not correctly identify the actual location where you are located, or if your account information has recently changed or has otherwise not been updated, 9-1-1 calls may be misdirected to an incorrect emergency response site. You need to update your 9-1-1 information if you move your device to a different location. In the event you are not able to speak during a 9-1-1 call, the call taker would dispatch emergency response vehicles to your last registered address.

(e) **9-1-1 Calls May Not Function:** For technical reasons, the functionality of 9-1-1 VoIP emergency calls may cease or be curtailed in various circumstances, including but not limited to:

i) **Failure of service or your service access device** – if your system access equipment fails or is not configured correctly, or if your VoIP service is not functioning correctly for any reason, including power outages, VoIP service outage, suspension or disconnection of your service due to billing issues, network or Internet congestion, or network or Internet outage in the event of a power, network or Internet outage;

ii) **Service Outages** - You may need to reset or reconfigure the system access equipment before being able to use the VoIP service, including for 9-1-1 emergency calls; and

iii) **Changing locations** – if you move your system access equipment to a location other than that described in your account information or otherwise on record with Packetworks.

(f) **Network Congestion:** There may be a greater possibility of network congestion and/or reduced speed in the routing of a 9-1-1 call made utilizing the Service as compared to E9-1-1 Dialing over traditional public telephone networks.

(g) **Alternate Services:** If you are not comfortable with the limitations of 9-1-1 emergency calls, Packetworks recommends that you terminate the VoIP services or consider an alternate means of accessing traditional 9-1-1 emergency services.

(h) **Conveying Limitations to other household residents and guests:** You are responsible for notifying, and you agree to notify, any user or potential users of your VoIP services of the nature and limitations of 9-1-1 emergency calls on the VoIP services as described herein.

**18.6 Limitation of Liability:**

Packetworks will not be liable to you or to any third party for any inability to use the Packetworks' VoIP Services or to obtain access to 9-1-1 emergency services as a result of the limitations described above. In order for VoIP 9-1-1 service to function properly, you must use the Adapter which forms part of the Equipment we have provided you and other Equipment at your service address. Packetworks will not be liable to you or to any third party for your failure to comply with this requirement.

**TO CONTACT US:**

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